Applying for

CUSTODY ACCESS & SUPPORT

In New Brunswick

Public Legal Education
and Information Service
of New Brunswick

Applying for Custody, Access & Support in New Brunswick

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This publication does not contain a complete statement of the law in the area of family law and laws change from time to time.

This Guide does not offer legal advice; it is for general information only. PLEIS-NB and its contributors are not responsible for errors and misunderstandings.

If you have a problem, need specific legal advice or have questions, consult a lawyer.

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1. INTRODUCTION

1.1 Is This Guide for Me?

1.1.1 Who Is This Guide For?

This guide is to help people who must make their own applications for custody, access and support. It is also for people who want to change a custody, access or support order or enforce a custody or access order. This guide is not for people who can reach an agreement or who can get a lawyer. You should explore all the alternatives before deciding to make an application for custody or access without a lawyer. You may be able to find a legal advice clinic or advocacy group in your community that can help you use this guide. You may also find it helpful to invest in legal advice if a complication arises.

Remember to check the Glossary for words you need to understand.

See Section 2.1 on "Other Options" page 3.

1.1.2 Divorcing Couples

This guide is not for couples that are applying for a divorce. If you plan to do your own uncontested divorce, you can use the *Doing Your Own Divorce in New Brunswick* guide. It is available at libraries around the province, or you can buy it from Public Legal Education and Information Service of New Brunswick (PLEIS-NB) or from the courthouse in Moncton or Fredericton. You may also order and pay for the guide from any Service New Brunswick (SNB) office. The guide is also on the Internet at www.legal-info-legale.nb.ca and www.familylawnb.ca under "Self-Help Guides".

1.1.3 Marital Property

Often when married couples separate they deal with other issues such as the division of marital property. However, information on dividing marital property is beyond the scope of this guide. If you are married you can contact a lawyer for more information on this subject. Also, PLEIS-NB has a pamphlet available called *Marital Property in New Brunswick*.

For PLEIS-NB's contact information, see Section 2.2.3 page 5.

1.2 How Will This Guide Help Me?

If you want to start court proceedings:

This guide can help you:	See Section
■ Apply for a custody/access/support order	4
■ Apply to change a custody/access/support order	13.3
■ Apply to enforce a custody/access order	13.2

If someone has started court proceedings against you:

This guide can help you:	See Section
■ Respond to an application for a custody/access/support order	10
■ Respond to a motion to change a custody/access/support order	6.7
■ Respond to a motion to enforce a custody/access order	6.7

1.3 How Much Will It Cost?

The cost of making an application will depend on how complicated your case is and the choices you make. If you are receiving assistance under the *Family Income Security Act* or from the Legal Aid Program, there is no filing fee for custody and support applications.[1] The basic cost is for copies of the forms and photocopies.

1. Rule 73.20 *Rules of Court*

Other costs may include:

- this guide
- copies of legislation
- hiring someone to serve documents
- hiring a lawyer for specific questions or tasks
- fees for a commissioner of oaths
- fees for witnesses
- certified copies of birth and marriage certificates

You should explore all the alternatives before deciding to make an application for custody or access without a lawyer.

If you are not receiving assistance under the *Family Income Security Act* or from the Legal Aid Program, you will have to pay the filing fee as follows:

- In Section 4, a Notice of Application (Form 73A or 73AA) of $75.00.
- In Section 10, a Responding Document of $10.

Also, you may have to pay a photocopy fee to obtain blank copies of these forms or others forms which you can get at any SNB office. Only certain forms are available from the courthouse. Most of the forms are also available on the Family Law NB website at www.familylawnb.ca. The forms on this website, which is sponsored by PLEIS-NB, include instructions about filling them out and examples.

2. BEFORE YOU START

2.1 Options and Alternatives

2.1.1 An Important Note

Carefully consider all options for making custody arrangements before you decide to apply to court without a lawyer. This guide sets out the basic procedure for making an application but there are many potential complications.

2.1.2 Custody or Separation Agreement

Going to court and asking a judge to decide for you is the last resort. It is only necessary if you cannot agree.

If you and the other parent can agree about custody and access on your own, you can write a custody agreement. Sometimes people include custody in a separation agreement along with other issues such as division of marital property and child support. If you can agree on custody, you should both see separate lawyers to make sure that the agreement is in your best interests.

2.1.3 Support Agreement

If you make an agreement about child or spousal support, you can file this agreement with the court. It can then be enforced like a court order and it will be included under the provincial **Family Support Orders Service** (FSOS). (See PLEIS-NB's booklets on the **Family Support Orders Service**).

2.1.4 Mediation

If you need some help to come to an agreement, you should try mediation. Mediators are trained to help people resolve conflicts and reach agreement. In mediation a third person such as a social worker helps you negotiate an agreement. Mediation may not be appropriate if the relationship was abusive.

2.1.5 Finding a Mediator

For mediation services check the yellow pages under "Mediation".

2.1.6 Domestic Legal Aid

The New Brunswick Legal Aid Services Commission provides free family legal representation for persons with low income or on income assistance. However, Legal Aid does not cover all family law proceedings. If you apply and qualify for a covered service, Legal Aid will provide you with a lawyer to help you apply for custody, access, and support. You can get a booklet called **Legal Aid in New Brunswick** from PLEIS-NB.

2.1.7 Hire a Lawyer

For the PLEIS address, see Section 2.2.3 page 5.

If you can afford to hire a lawyer to make a custody application, you should. It may seem expensive but hiring a lawyer is an important investment. Custody and access are emotional matters and are often complicated. A lawyer can help present your case and tell you about rights that you may not know you have. Look for a lawyer who specializes in family law. You might be able to negotiate a fee. PLEIS-NB can provide you with a booklet about **You and Your Lawyer**.

2.1.8 Collaborative Law Process

Another option to mediation or going to court is the Collaborative Law Process. If you and your spouse would prefer to be involved in negotiating a solution and want to create a solution together, then the Collaborative Law Process may work for you. It is a process where you and your spouse each have a collaborative law lawyer and the four of you work as a team, working to understand each other's needs. You cooperate with your spouse to come up with the best solution for both of you and your children. Once you reach an agreement, the collaborative lawyers will help you get approval of the court.

For more information or to find a lawyer who practices Collaborative Law, visit the Canadian Bar Association website at www.cba.org or the Collaborative Practice website at www.collaborativelaw.ca.

2.1.9 Take a Parenting After Separation Course

Separation can be a time of pain, confusion, and sorrow for all involved. A free information program for parents living separately is offered by Court Services Division, New Brunswick Department of Justice and Consumer Affairs. It is called "**For the Sake of the Children**". Professionals knowledgeable in separation and divorce discuss both legal and emotional issues and explain ways to reduce conflict between parents and help them focus on their children. Parents never take the same class. You should consider registering for this course before you take action. Call the **Family Law Information Line** at **1-888-236-2444** to register.

2.1.10 Making Your Own Application

2. Rule 73.04(2) *Rules of Court*

You have the right to make your own application.[2] Although it is always better to have a lawyer, you can make an application yourself asking for custody of or access to your children.

2.2 Understanding Custody, Access and Support

2.2.1 The Legal Framework

3. *Family Services Act*, S.N.B. 1980, c.F-2.2

4. s.129(1) *Family Services Act*

A law called the *Family Services Act*[3] sets out the legal rights and responsibilities of parents and spouses in New Brunswick. Both parents have custody of their children unless there is a written agreement or court order that says custody is with one parent.[4] When a marriage or relationship breaks down, parents must make arrangements for the care of their children. The *Family Services Act* sets out the

framework for applications for custody and access outside a divorce context. The *Rules of Court*[5] set out the full procedures for court. You may need to refer to them if this guide does not cover all the court procedures that you need.

5. *Judicature Act*, S.N.B. 1985, c.J-2.

2.2.2 Where to Get Legislation

You might find the *Rules of Court* at a library. You can buy a copy of the *Family Services Act* ($17 plus 7% H.S.T.) and the *Rules of Court* ($55 plus 7% H.S.T.). These prices may change if the legislation is amended and do not include shipping and handling fees. You can get these and other provincial legislation at the Queen's Printer, P.O. Box 6000, Fredericton NB, E3B 5H1; telephone (506) 453-2520. You can also find all Acts and Regulations, *Forms of Court* (http://www.gnb.ca/0062/regs/Form/form_liste.htm) and *Rules of Court* on the government of New Brunswick's web site at **www.gnb.ca** under 'Acts and Regulations'.

You can find legislation at a law library or online at www.gnb.ca under "Acts and Regulations".

2.2.3 Other Sources of Information

To make your own application, you need to learn about custody, access and support. To start you should read the relevant resources or listen to the ask an expert videos on the Family Law NB (www.familylawnb.ca) or PLEIS-NB (www.legal-info-legale.nb.ca) websites. They provide general information on topics such as:

- Custody and Access
- Child and Spousal Support
- Domestic Contracts
- Self help guides
- Family Support Orders Service (FSOS)
- Common-law relationships
- Marital Property
- Legal Aid

You can get copies of many free family law resources by contacting PLEIS-NB by phone, fax or email.

PLEIS-NB
P.O. Box 6000
Fredericton, NB E3B 5H1
Telephone: (506) 453-5369
Family Law Information Line: 1-888-236-2444
Fax: (506) 462-5193
Email: pleisnb@web.ca
www.legal-info-legale.nb.ca
www.familylawnb.ca

In addition, you may find useful information at a library or a bookstore. As well, check out the family law information on other reputable websites such as Justice Canada http://www.justice.gc.ca/eng/pi/fcy-fea/index.html .

Read On... Before you start you should read the information in the rest of Section 2.

6. s. 129(2) and (3) *Family Services Act*

2.3 Eligibility to Apply for Custody or Access[6]

2.3.1 Parents

The *Family Services Act* says that either parent can apply for custody or access. It does not matter if the parents are married. Parents of an adopted child are included. If you are not the biological parent but have treated the child as your own, you may still be able to get custody or access.

2.3.2 Other People

The Act also says that people other than parents can apply for custody or access. For example grandparents, step-parents, aunts, uncles or others can apply.

7. s. 130 *Family Services Act*

2.4 Jurisdiction[7]

2.4.1 What is Jurisdiction?

You cannot apply to a court just anywhere. The court where you apply must have the power to hear your case. This is a question of jurisdiction. In a custody case, jurisdiction depends on where the child lives. For example, if the child has been in Ontario for the past five years and is still there, you could not bring an application in New Brunswick.

2.4.2 In New Brunswick

The court in New Brunswick has jurisdiction to hear your custody case if:

- Your child is habitually resident in New Brunswick when you make your application for custody or access. This means that your child's home must be in New Brunswick.

Or

- Your child is not habitually resident in New Brunswick, but
  (a) is physically present in New Brunswick, **and**
  (b) has a "real and substantial" connection to New Brunswick, **and**
  (c) substantial evidence about the child's best interests is available here.

2.4.3 Other Considerations

For a definition of habitually resident, see the Glossary on page 40.

The court does not have jurisdiction if there is already a similar application in the province where the child is "habitually resident." If there is a court order outside New Brunswick, someone can ask a court in New Brunswick to accept that order. If it does then the court no longer has jurisdiction to hear a custody case. The court will also consider how appropriate it is for the application to go ahead in New Brunswick.

2.4.4 Judicial Districts

There are several judicial districts within New Brunswick. To help you decide which one to use, Section 15 lists the counties in each judicial district.

2.4.5 If the Other Parent Does Not Live in New Brunswick

As long as you fall within the rules above, you can file an application in your local court even if the other parent does not live in New Brunswick. You can get a final decision about custody and access. However, the court here may only make a provisional order about child or spousal support.[8] The provisional support order is sent to a court in the province where the other parent lives. The support order does not take effect until the court there makes a decision. The other parent can provide information and then the court there will either agree with the provisional order or change it. This process is time-consuming.

8. *Reciprocal Enforcement of Maintenance Orders Act*, S.N.B. 1985, c. R-4.01.

2.4.6 Potential Complications

If you make an application for custody under the *Family Services Act* and you are married, the other parent may petition for divorce. A divorce petition will over-ride your application, even if it starts later.[9] You may then have to respond in the place where the other parent files the petition. It may also complicate matters if you plan to move away from New Brunswick either during the application or after it. You should see a lawyer to find out about these potential complications.

9. s. 117(1) *Family Services Act*

2.5 Best Interests of the Child

Courts make custody and access decisions based on what is best for the child, not what is best for the parent. The judge only looks at what is in "the best interests of the child." The *Family Services Act* sets out some of the circumstances that the judge considers.

Check the Glossary under "best interests of the child."

It is up to the judge to look at all the circumstances and decide what is best for the child. You have to prove that it is in the child's best interests for you to have custody or access. This depends on the specific circumstances of your case, the definitions under the Act (Family Services Act) and previous case law.

You can find the court office addresses in Section 15 on page 37.

Questions

If you have any questions about your application or court procedures, contact the court administrator at the Family Division office. The court administrator cannot give you legal advice. If you have a question that the administrator cannot answer, you may need to contact a lawyer. If you need general information about court procedure, you can contact the Family Law Information Line at 1-888-236-2444.

3. WHAT YOU SHOULD KNOW ABOUT PREPARING DOCUMENTS

3.1 The Forms

You can get many of the forms and documents that you will need for a family law proceeding, such as Forms 72J, 73A or 73AA, and 37A, from the **Family Law NB** website at www.familylawnb.ca. Some forms may be available at the court offices for a small fee. You can also get hard copies of many forms from SNB for a photocopy fee. It is best to use these forms, although you can use the forms shown in the *Rules of Court* Volume 2, as a guide and create your own. See the examples of forms at the back of this guide. When you complete the forms, make any necessary changes so the form is accurate for your situation.[10] You only need to fill in the forms in one language, English or French.[11] It is a good idea to photocopy the blank forms before you start in case you make a mistake.

10. Rule 4.08(1) *Rules of Court*

11. Rule 4.08(3) *Rules of Court*

3.2 Careful Preparation

Court documents must be prepared carefully. Lawyers are trained to do this. However, you can prepare them yourself if you pay careful attention to detail and make sure everything is accurate. Take time to look at the examples before you start. If you prepare your own documents you should still consider getting a lawyer to look over them. This may help make sure that everything goes smoothly. You may be able to do this at a legal advice clinic if one is available in your community.

Tips for Preparing Your Documents[12]

- If you use the forms on the Family Law NB website, they have instructions on filling them in. They are formatted properly. You can print them off or complete them on-line, but be sure you print them on the correct length of paper as indicated. The court has strict rules for the format of forms and documents.
- When completing hard copies of the forms, you can print if your **handwriting is neat and legible**. The court may return any documents that are not easy to read.
- **At the beginning of every document**, you must put:[13]
  - the court file number (once you have one),
  - the name and division of the court: Court of Queen's Bench of New Brunswick, Family Division,
  - the judicial district where the case will be decided,
  - the name of the person making the application to the court (called the Applicant) and, under that, the name of the person who will receive the application (called the Respondent),
  - the name of the document and the form number if there is one,[14]
  - the date signed
- You must **sign each document**. Make sure you type or **print your name clearly underneath the signature**. Do not photocopy signatures; photocopy the original before signing it. Then sign the original and the copies.

12. Rule 4.01 *Rules of Court*, Amended Regulation 96-6

13. Rule 4.02 *Rules of Court*

Make sure that you fill out the forms completely. Remember the court will not be less demanding just because you are making your own application.

Always make a copy of any documents for your own records.

14. Rule 4.08(2) *Rules of Court*

3.3 Preparing Affidavits

3.3.1 What is an Affidavit?

An affidavit is a signed statement that you swear or affirm is truthful. Making an affidavit is like being a witness in court. An affidavit is not a form - it is a written statement that you must prepare. It is important to make sure that everything you say in your affidavit is true. Making a false statement is a criminal offence.[15]

Making an affidavit is like being a witness in court.

15. s. 131 *Criminal Code 1997*

3.3.2 How to Write an Affidavit[16]

Write an affidavit in the first person, as if you are speaking to someone. Number the paragraphs and try to put only one idea in each paragraph. The affidavit must be clear and concise. When it is ready, you must take it to a Commissioner of Oaths. See Section 3.5 on "Swearing to the Documents".

16. Rule 4.05 *Rules of Court*

3.3.3 What Do I Put in an Affidavit?

In your affidavit, you must set out briefly the details of any circumstances that relate to your application. It should include relevant facts about which you have personal knowledge. Information is relevant if it helps to show a fact that you want to prove. Personal knowledge means that you saw events yourself. It is not information that someone else told you, unless it was the other parent. If you need to include other information, ask a person who has personal knowledge about it to prepare an affidavit. It is important to include appropriate information because mistakes can have serious consequences.

There is an example of an affidavit on page 66.

You should consider getting a lawyer either to write your affidavit or to go over it.

3.3.4 Two Particular Kinds of Affidavits

In addition to the above rules about affidavits, there are special rules when making an affidavit for an application or for a motion.

- **Content of an Affidavit for an Application**[17]

In an Affidavit for an Application you must normally only include relevant facts about which you have personal knowledge. However, you may include information and belief about a fact if you and the other parent agree on that fact or if the fact is not controversial. Clearly indicate when you are stating a belief and not personal knowledge. You must also clearly state how you got this information and why you believe it.

17. Rule 39.01(5) *Rules of Court*

- **Content of an Affidavit for a Motion**[18]

In an Affidavit for a Motion you can also include beliefs that you have and information about which you do not have personal knowledge. Clearly indicate when you are stating a belief and not personal knowledge. You must also clearly state how you got this information and why you believe it.

18. Rule 39.01(4) *Rules of Court*

For example: Someone tells you that they saw the other parent with airplane tickets to Toronto for an adult and a child. This information leads you to believe that the other parent is planning to take the child out of the province against a custody or access order. You can include this information in your Affidavit for a Motion.

19. "Forms," Volume 2 *Rules of Court*

3.4 The Financial Statement (Form 72J)[19]

See "**Financial Statements and Income Information: A Guide to Completing Form 72J.**" call the Family Law Information Line (1-888-236-2444) or visit www.familylawnb.ca to get a copy.

3.4.1 When Do I Fill Out a Financial Statement?

- You have to fill out a Financial Statement if
  - the other parent applies for child support from you.
  - you already pay child support and someone applies to change it.
  - you apply for child support or to change a child support order and either parent applies for the amount of child support to be different from the table amount. This difference could be due to special expenses, children over the age of majority with special needs or educational expenses, the custody arrangements, undue hardship, the payer's income being over $150,000, or special provisions contained in an order or agreement.
  - you apply for spousal support or to change a spousal support order.
  - your spouse applies for spousal support from you.
  - you already pay spousal support and someone applies to change it.
  - you apply for support for a dependent person who is not a child.

It is important that you make sure that everything in your Financial Statement is true.

For more information on the child support guidelines, see Section 5.1.2, page 14 of this guide.

- You do not have to fill out a Financial Statement if
  - you, or the other parent apply to the court to deal only with custody or access issues.
  - you apply for child support or to change the amount of child support and you ask for the basic table amount under the guidelines, with no special expenses, and the other parent does not disagree.

20. s. 131 *Criminal Code* 1997

3.4.2 An Important Form

The Financial Statement (Form 72J) is very important. Take your time and read the form carefully. Be sure to include everything so the statement shows your situation accurately. It is important that you make sure that everything in your Financial Statement is true. Making a false statement is a criminal offence.[20] You should hire a lawyer to review your Financial Statement if you can.

3.4.3 An Overview of the Financial Statement

The first page of the Financial Statement is a summary. The rest of the Financial Statement consists of seven appendixes. Each appendix helps you calculate the totals that go in the boxes on the first page.

It is important that you make sure that everything in your Financial Statement is true. When your Financial Statement is ready, you must **swear to it before a Commissioner of Oaths**.

3.5 Swearing to the Documents

3.5.1 Go to a Commissioner of Oaths

If you have prepared either an affidavit or a financial statement you must take them to a person who is a Commissioner of Oaths.[21] All lawyers are Commissioners of Oaths. Lawyers may charge a fee for this service. You can call ahead to find out how much it costs. A Commissioner of Oaths will not review your documents or give you advice.

21. Rule 4.05(11) *Rules of Court*

3.5.2 Swear the Information is True

Take your documents (affidavits and financial statements) to the Commissioner of Oaths where you must sign the documents and swear that the information in them is true, to the best of your knowledge. Your documents should not have any mistakes. If you have erased or corrected anything the Commissioner of Oaths must initial the changes.[22] The Commissioner of Oaths signs the documents after watching you sign them.

It is important to make sure that everything in these documents is true.

22. Rule 4.05(10) *Rules of Court*

4. PREPARING AN APPLICATION FOR CUSTODY OR ACCESS

Checklist of Steps If You Are Applying for Custody or Access	
Steps to Take	**See Section No.**
✓ Consider your options.	2
✓ Gather information and forms.	3.1
✓ Prepare your documents.	3 and 4
✓ Decide if you need to make a motion and if so, prepare the documents.	6
✓ Swear to your documents.	3.5
✓ File your documents at the court office.	7
✓ Serve the documents on the other parent.	8
✓ File the Trial Record if necessary.	9
✓ Decide what you must prove to the court and how you will do it.	11
✓ Prepare for the court hearing.	11 and 12

4.1 What Documents Do I Need to Prepare an Application for Custody or Access?

To make an application for custody or access you need to prepare the following documents for the court:

- A Notice of Application [23] (Form 73A or 73AA),
- An Affidavit,
- A Financial Statement [24] (Form 72J).

See Section 3 for information on preparing documents. Section 3.1 tells you where to get the forms. Section 3.2 gives you general information on how to prepare documents.

23. "Forms", Volume 2 *Rules of Court*

24. "Forms", Volume 2 *Rules of Court*

4.2 The Notice of Application

There is an example of a Notice of Application (Form 73AA) on page 51 and an example of a Notice of Application (Form 73A) on page 55.

4.2.1 What is It?

The *Notice of Application* is the document that starts the legal process. It tells the court what you are requesting. For example, it tells the court if you are requesting an order for sole custody. You also set out the relevant information about existing agreements or previous court proceedings about your family. In addition, you list the documents that you are putting with the Notice of Application.

4.2.2 Terminology

25. Rule 16.06(2) *Rules of Court*

If you are making the application, you are the "applicant". The other parent is the "respondent".[25] The notice uses the word "you" to refer to the respondent. It is as if the court is writing directly to the other parent to tell him or her about the application.

4.2.3 Two Forms

There are two forms of the Notice of Application being used for custody applications - Form 73A and Form 73AA. Before you start you must find out which form you need. **The form you use depends on the jurisdiction where you apply.** Call the Family Division court office where you are going to apply. The addresses are in Section 15. Ask whether you need to use Form 73A[26] or Form 73AA[27] for a custody application.

26. Rule 73.03(1) and Form 73A *Rules of Court.*

27. Rule 73.17.1(1) and Form 73AA *Rules of Court*

4.3 The Affidavit

You must prepare an affidavit to go with the Notice of Application. Read Section 3.3 on "Preparing Affidavits".

There is an example of an affidavit on page 66.

What to Include in your Affidavit:

- the full names of you and the other parent.
- where you, the other parent and your children lived when you were together and where everyone is living now.
- the nature and length of your relationship, such as whether you lived together, the date you began living together, whether you were married and the date that you stopped living together.
- the date you and the other parent separated.
- the full names, dates of birth, and ages of your children.
- Also give the reasons that it is in the children's best interests:
  - to remain in your care, if they are now in your care.

  or
  - to be in your care, if they are not in your care now.

  or
  - for you to have access.

4.4 The Financial Statement

You must fill out a Financial Statement (Form 72J) to go with your Notice of Application. For instructions on completing a Financial Statement, see Section 3.4. You can also contact PLEIS-NB or the Court and ask for a copy of the guide for completing Form 72J called "**Financial Statement and Income Information**".

See Section 14 for information about harassment problems.

There are examples of Notices of Application on page 51 and 55.

5. ADDING AN APPLICATION FOR CHILD OR SPOUSAL SUPPORT

5.0.1 Applying for Support

There are a number of ways to apply for child and spousal support. Often spouses or parents agree on the amount of child or spousal support. That amount can be set out in an agreement. Help to work out an agreement is available through mediation services in the community. A legal agreement must be in writing, signed by both parties and witnessed.[28] You can file a copy of the agreement with the court. Then the court will enforce it the same as a court order. If spouses or partners cannot agree, they must apply to the court and a judge decides.

28. s. 132(4) *Family Services Act*

5.1 Child Support

5.1.1 Eligibility

The law says that **every parent** must provide financial support[29] according to each parent's income. It does not matter if the parents are married or not. The parent with custody receives the child support payments. If you receive income assistance, the support will be included in your income assistance cheque until you no longer receive benefits. The parent must use the money for the child.

29. s. 113 *Family Services Act*

5.1.2 The Child Support Guidelines

For information on the child support guidelines go to www.familylawnb.ca or contact PLEIS-NB (address in Section 2.2.3). You can also check out Justice Canada's automatic child support look up http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/tool-util/apps/look-rech/index.asp .

Since May 1, 1997 federal child support guidelines provide tables that set out the amount of child support for divorce cases. New Brunswick has adopted these guidelines for child support orders under the *Family Services Act*.[30] The guidelines and tables will help you figure out what amount of child support you may receive. The amount is based on the support payer's annual income, province of residence and the number of children entitled to support. The amount may be different from the table amount depending on circumstances, including special expenses or undue hardship. The tables do not bind parents who negotiate an agreement. If the parent paying support lives in another province, the tables for that province would apply. If you are not sure, a lawyer can tell you which tables apply.

30. *Family Services Act*, S.N.B. 1980, c. F-2.2, Regulation 98-27

5.1.3 What to Include in the Affidavit

Put the information about your request for support on the same affidavit that you prepare for your custody application. See Section 3.3 on "Preparing Affidavits".

- **First**, you have to show that the children
  - live with you and depend on you for support; and
  - are under nineteen years of age[31] or for some other reason require support.

You cannot include a child who has been married.

31. s. 1 definition of "child", and s. 113(b) *Family Services Act*

- **Second**, you have to show that each child is either
  - a natural or adopted child of you and the other parent;

  or
  - a stepchild treated by your former partner as his or her own child.[32]
- **Third**, you have to show that the other parent can pay support.[33] Explain what the other parent did for a living when you were together and what he or she does now. State what his or her earnings were when you were living together or when your child was born. Also say what they are likely to be now. The other parent will have to file a Financial Statement and other income information with the court showing his or her current income.[34] You should receive a copy of the other parent's financial statement and income statement.

32. s. 1 definition of "parent", *Family Services Act*

33. s. 113 *Family Services Act*

34. Rule 73.11 and Rule 73.17.1(8) *Rules of Court*

5.2 Spousal Support

5.2.1 Eligibility

35. s. 112(1) *Family Services Act*

Every person has an obligation to provide financial support for his or her spouse according to need, to the extent that he or she can.[35] Spousal support is usually a temporary measure. In most cases the spouse receiving support is expected to become self-sufficient. Sometimes people who are not married but have been living together are entitled to support. If this is your situation, you have one year to apply after you have separated.[36] If you ask the court to make an order for spousal support, you must show that you need it. You will also have to show that your spouse can pay some support.

Spousal support is usually a temporary measure.

36. s. 112(3) *Family Services Act*

5.2.2 What to Include in the Affidavit

Use the same affidavit that you prepare for your custody or access application. Add the information showing that your circumstances make you eligible for support. See Section 3.4 on "Preparing Affidavits".

- **First**, you have to show the court that you were
  - Legally married to your partner;

  or
  - Living in a family relationship with your partner for at least three years and were substantially dependent upon your partner for support;

  or
  - Living together with your partner for less than three years, and a child was born of your relationship.
- **Second**, you have to show the court why you need spousal support. Read section 115(6) in the *Family Services Act* to find out what circumstances the court may consider. For example, if you have genuine health problems, which make it difficult for you to get a job, you can include this in the affidavit. You must be careful to make your statements accurate and relevant. Since it is important to write an affidavit properly, you may want to see a lawyer for this step.

Make your statements accurate and relevant.

37. s. 115(6) *Family Services Act*

The *Family Services Act* sets out some of the circumstances that the court will consider when making a spousal support order, including:[37]

- the assets and means of both parties and any benefit or loss of benefit under a pension plan or annuity;
- your ability to provide for your own support;
- the respondent's ability to provide support;
- your age and physical and mental health and same of the respondent;
- whether you have any physical or mental disability or other cause that would impair your ability to support yourself;
- the length of time you and the respondent lived together;
- your needs in relation to the standard of living that you and the respondent shared while you lived together;
- the measures available for you to become financially independent and the length of time and cost involved to enable you to take such measures;
- the legal obligation of the respondent to provide support for any other person (if the respondent is/was lawfully married to someone else, the court will give priority for the support of that person or a child of that marriage);
- the desirability of either party to remain at home to care for a child;
- any contribution you made to the career potential of the respondent;
- if you were married, the effect that the responsibilities you assumed while you were living together had on your earning capacity;
- if you were married, whether you had undertaken the care of another dependant who is of the age of nineteen years or over and unable by reason of illness, disability or other cause to take care of him or herself;
- if you were married, whether you had undertaken to assist in the continuation of an education program for another dependant who is of the age of nineteen years or over and unable for that reason take care of him or herself;
- if you were married, any housekeeping, child care or other domestic service you performed for the family, in the same way as if you were devoting the time spent working and contributing the earnings to the support of the family;
- any other legal right you have to support other than out of public assistance programs; and
- the conduct of the parties, where such conduct unreasonably quickens, delays or aggravates the need for support or unreasonably affects the ability to pay support.

Justice Canada has released a set of guidelines entitled the **Spousal Support Advisory Guidelines** (SSAG). They include formulas for estimating spousal support – the formulas involve calculations that take into account different factors, including whether there are children of the marriage, both parties' income, the length of the relationship, etc. There are no "tables" for you to use to calculate spousal support. The SSAG are used in an advisory capacity ONLY. This means that unlike the Child Support guidelines, they are not mandatory. You should consult a lawyer to find out whether you might be entitled to spousal support and to estimate the amount of support.

6. MAKING A MOTION

6.0.1 What is a Motion?[38]

Sometimes a person needs to ask the court to decide on a certain matter before, during or after the court hearing. This procedure is called making a motion. This section explains how to make a motion. You can make a motion if it is related to an ongoing matter before the court. You have an ongoing matter before the court once a parent files a Notice of Application. See Section 4 for information on "Preparing an Application for Custody or Access."

38. Rule 37 *Rules of Court*

For general information on preparing your documents see Section 3, page 8.

Remember that making a motion does not necessarily mean that the judge will agree to your request. It is always up to the judge to decide. Sometimes you have to wait until the regular proceedings take place before you have a court order.

You can make a motion if it is related to an ongoing matter before the court.

6.1 Making a Motion Before the Final Court Order

Sometimes you may need to make a motion asking the court to take steps before the court hears the matter and makes a final decision. For example, a parent applying for custody may want to make a motion for interim custody if the other parent has threatened to harm or abduct the child. In this case you can ask the judge to make an *interim order* allowing the child to remain in your care temporarily.[39] An interim order is a court order which is only temporary. It usually lasts until there is a final order. You can make this type of motion when you file the custody application or any time before the final court order.

39. Rule 73.15 *Rules of Court.*

6.2 Making a Motion After the Final Court Order

Sometimes you may need to make a motion after the final court order. For example, you may need to ask for a change (a variation) in the court order if there is a significant change in circumstances. See Section 13.3 on "Changing a Court Order". Or you may need to make a motion to enforce a court order. See Section 13.2 on "Enforcing a Court Order".

There is an example of a Notice of Motion (Form 37A) on page 60.

There is an example of a Notice of Motion (Form 72U) on page 62.

6.3 Preparing the Documents

To make a motion you need to prepare at least three documents:

- Notice of Motion (Form 37A or Form 72U)
- Affidavit
- Affidavit of Service (Form 18B)

6.3.1 The Notice of Motion

In a Notice of Motion you tell the court what order you are requesting. You also refer to the legislation you are using and list the documents, such as affidavits and financial statements that you are including.

Use Form 72U if you already have a child support order and are applying to change it. Use Form 37A for all other motions.

Read carefully Section 3.3 on "Preparing Affidavits" on page 9.

6.3.2 The Affidavit

You must prepare a detailed affidavit to go with the Notice of Motion.[40] Make sure you explain the facts clearly, accurately and in detail in your affidavit so that everything is there that the judge needs to know.

40. Rule 39.01 (2) *Rules of Court*

If You Want to Enforce a Court Order

In the affidavit be sure to include

- the date of the court order,
- what the order says, and
- the date and the manner in which the order was breached.

If You Want to Change a Court Order

In the affidavit be sure to include

- the date of the court order,
- what the court order says,
- how the circumstances have changed, and
- the reasons why the court should change the order.

6.3.3 A Financial Statement and Other Documents

Sometimes you need to include other documents. For example, you may have to include financial information if you are making a motion to change a support order. See Section 3.4 for more information on the Financial Statement.

6.3.4 Will there be a Court Hearing?

Often there is a court hearing for a motion. At the hearing, the judge decides after listening to you, the other parent and any other witnesses. However, sometimes the judge decides a motion based on the court documents and the evidence in the affidavits alone.[41] In this case you do not have to go to court. To find out if you must go to a court hearing, ask at the Family Court office. Ask after you file and serve the Notice of Motion. If there is a hearing, see Section 12 for information on "Going to Court".

41. Rule 37.13 *Rules of Court*

6.4 Filing the Documents

Once you prepare the Notice of Motion, deliver it with the other documents to the court office. Normally you use the court office where the Notice of Application was filed.[42] See Section 7 on "Filing your documents at the court office". The judge will schedule a date for the hearing and write it on the first page of the Notice of Motion. You will receive a copy.

42. Rule 37.02 *Rules of Court*

6.5 Serving a Copy of the Documents

6.5.1 The Procedure

Once you have a date for the hearing you must get someone to deliver a copy of the documents to the other parent. If the other parent has hired a lawyer and the lawyer signed the Notice of Application, you only need to deliver the documents to the lawyer. See Section 8 on "Serving Documents". **You must arrange to have the documents served at least 10 days before the court date.**[43]

43. Rule 37.04(5) *Rules of Court*

For example if the date is August 31, you must deliver the documents by August 21 before 4:00p.m.

However, if you are making a motion to change a child support order with **Form 72U, you must serve the Notice of Motion at least 35 days before the hearing** (See Rule 72.2 (5)). If it is impossible to serve the person in time you may still be able to serve and file the documents, but there may be negative consequences.

Take or send the **Affidavit of Service** (see Section 8.2) to the court office **at least 5 days before the date of the court hearing**. This helps to avoid a delay.

6.5.2 A Motion without Notifying the Other Parent[44]

In some urgent cases, it is possible to get the court to hear a motion without notifying the other parent. For example, it may be appropriate if you have a good reason to believe that the other parent will abduct the child before the hearing on the motion. This type of procedure is rare and you should consult a lawyer.

44. Rule 37.04(2) *Rules of Court*

6.6 Filing a Record[45]

More than 48 hours before the date of the hearing, not counting Saturday or Sunday, you must file copies of the documents for the motion. This is called a record.

45. Rule 37.05 *Rules of Court*

What to Include in the Record

- a **cover page** called a Record on Motion.
- an **index**, which lists all the documents in the record. It is like a table of contents. You number the pages and show the page numbers in the index.
- a copy of the **Notice of Motion**.
- a **copy of the affidavits** for the motion, for both sides, and any other materials to be used for the hearing.

Put the documents together with a paper clip in the order that the index shows. Then file the record at the court office.

There is an example of a cover page on page 65.

There is an example of an index on page 65.

See Section 7 on "Filing Your Documents at the Court Office" on page 21.

6.7 Responding to a Notice of Motion

If you receive a Notice of Motion, you should immediately see a lawyer. See Section 2.1 on "Options and Alternatives". If you cannot get a lawyer, then you can take the following steps.

Steps to Respond to a Notice of Motion

- Prepare a **Responding Document** if you want to oppose the motion. For instructions see page 26. You may also have to prepare a Financial Statement. For instructions see Section 3.4.
- Next **file** the Responding Document and any other documents at the court office at least 4 business days before the hearing.[46] See Section 7 on "Filing Your Documents at the Court Office". If the Notice of Motion that you received is Form 72U, you must file these documents within 20[47] days after receiving the notice.
- Then serve a copy of the Responding Document on the other parent. See Section 8 on "Serving Documents".
- If there is going to be a court hearing, **prepare** for it. See Section 11 on "Preparing for the Court Hearing" and Section 12 on "Going to Court".

If it is a motion to reduce support that you receive, you may be eligible for legal aid. Contact the New Brunswick Legal Aid Service Commission for more information. Contact information for Legal Aid offices is in Section 15, page 37.

46. Rule 39.04 *Rules of Court*

47. Rule 72.22.1(6) *Rules of Court*

7. FILING YOUR DOCUMENTS AT THE COURT OFFICE

7.0.1 The Court Office

You must deliver all the completed documents including the signed copy for the other parent and the filing fee for the court office.[48] The staff at the court office will file your application. The list in Section 15 also shows you which court office to use, depending on the county where the child lives. See also Section 2.4 on "Jurisdiction".

48. Rule 73.03(3) *Rules of Court*

The addresses for the Family Division court offices are in Section 15 page 37.

7.0.2 What to Include

Make two copies of each document. Put the original documents together with a paper clip. Do the same with each set of copies. You should now have 3 sets of the documents. One set is for the court, one is for you and one is for the other parent. Deliver them all to the court office.

7.1 Delivering the Documents

You can deliver the documents and the filing fee to the court in two ways (unless you are receiving income assistance or legal aid):[49]

49. Rule 73.03(3), Rule 73.17.1(4) and Rule 73.20 *Rules of Court*

- **Delivery in Person**

Take the documents to the court office in the judicial district where you are making your application.

- **Delivery by Mail**

Send all the documents by pre-paid mail or courier. Address the package to the court administrator of the Family Division in the judicial district where you are making your application. You should include a covering letter. Also include a self-addressed envelope so the office can return your copy.

There is an example of a covering letter on page 44.

7.2 The Procedure

After you deliver the documents, the procedure from this point depends on whether you use **Form 73A** (go to Section 7.2.1) or **Form 73AA** (go to Section 7.2.2).

7.2.1 Form 73A

When the documents get to the court office, the staff will[50]

50. Rule 73.04(1) *Rules of Court*

- give your case a **court file number**, and put it on all the copies. This number must appear on all court documents after this.
- give you a **court date** for your application. The staff will write the court date on the first page of the Notice of Application. The court date is often several months after you deliver your application to the court.
- keep the **original** and return a **copy for you** and a copy to be served on the other parent.

You must then arrange to serve a copy of all the documents on the other parent. See Section 8 on "Serving Documents". **This must happen at least 25 days before the court date**.[51] For example, if the court hearing is on August 31, you must serve the documents by August 5.

51. Rule 73.05 *Rules of Court*

7.2.2 Form 73AA

When you deliver the documents, the staff will[52]

- give your case a **court file number**, and put it on all the copies.
- keep a **copy** and return the original and the other copy to you.

52. Rule 73.17.1(5) *Rules of Court*

You will not receive a court date at this point. The next step is to serve a copy of the documents on the other parent.[53] See Section 8 on "Serving Documents". You should do this immediately, at the latest within six months of filing the application.[54] After the 20 day time for the other parent to reply has gone by, you file a Trial Record when you are ready to go to court.[55] See Section 9 on "Filing the Trial Record". When you file your Trial Record, the court staff will give you a court date. The court date is often several months after you file your Trial Record.

53. Rule 73.17.1(6) *Rules of Court*

54. Rule 16.08 *Rules of Court*

55. Rule 73.17.1(10) *Rules of Court*

8. SERVING DOCUMENTS[56]

56. Rule 18 *Rules of Court*

8.0.1 What is Service?

It is important to prove that the other parent has been served.

Normally for the court to hear your case you must inform the other parent about the application or motion. You do this by making sure that the other parent receives copies of the documents. This is called serving the documents. It is important to prove that you arranged to serve the other parent. Otherwise, the court will not go ahead with the case. **You cannot serve the documents yourself.** There are several ways to serve documents.

8.1 Methods of Service

8.1.1 Personal Service[57]

57. Rule 18.02(1)(a) *Rules of Court*

With this method of service, you must arrange for someone (the *server*) to hand-deliver the documents to the other parent. The person who serves the documents must be able to identify the other parent. For example, the person who is the server may know the other parent or have a picture, or they can ask the other parent for identification. Once the server identifies the other parent, the server usually tells the other parent their name and explains what the documents are. Then the server leaves the documents with the other parent. The server can leave the documents even if the other parent refuses to take them. The server will have to swear an Affidavit of Service (Form 18B), see the example on page 45. To arrange personal service you can

- hire someone from a **private company**. Check the yellow pages of the telephone book under "Process Servers."
- arrange for the Sheriff's Office to serve the documents for a fee
- get a **friend or relative** 19 years or older to serve the other parent.

8.1.2 Service by Registered Mail or Courier[58]

58. Rule 18.03(3)-(5) *Rules of Court*

The person serving the documents can use the registered mail service of the post office. Include an *Acknowledgement of Receipt Card* (Form 18A) for your spouse to sign and return back to you. You could even put a self-addressed stamped envelope in the package for your spouse to use. Send it along with the documents by prepaid mail or courier. There can be problems with this type of service if someone other than the intended person signs the receipt card. In this case it may be necessary to serve the documents again or serve the documents personally. Write "Personal and Confidential" on the envelope so that no one other than your spouse will sign for it.

If your spouse does not send the *Acknowledgement of Receipt Card* back to you, Canada Post should be able to supply you with the information needed to show that your spouse did accept service. When you use the Registered Mail service at Canada Post, they provide confirmation that Canada Post received the item for mailing and that the item arrived at its destination. You can find the name of the person who signed for the package and the date of delivery by calling 1-866-607-6301, though some restrictions may apply. Canada Post can fax the signature to you or you can view the signature online at: www.canadapost.ca. It is also possible to get a hard copy of the signature from Canada Post, if it becomes necessary, for a fee.

There is an example of an Acknowledgement of Receipt Card on page 47.

With other courier services, you need to use the *Acknowledgement of Receipt Card*. Some of these services have signature release agreements where the courier can leave the package without getting a signature.

59. Rule 18.03(6) *Rules of Court*

8.1.3 Service at Place of Residence[59]

If the server has tried but could not serve the other parent personally, he or she can do the following. Put the documents in a sealed envelope addressed to the other parent. Then leave it with any person who appears to be an adult occupant of the place where the other parent lives. The same or next day send copies of the documents addressed to the other parent by prepaid mail. Since it is important for parents to know about a custody or access application, the judge may not accept this kind of service if the other parent does not show up for court.

8.1.4 Service on a Lawyer

60. Rule 18.03(2) *Rules of Court*

If one of the people involved has hired a lawyer for this case or has authorized a lawyer to accept service, you can serve that person by leaving a copy of the documents with the lawyer.[60] However, you must make sure that the lawyer accepts the service by signing the copy and putting the date on it.

8.2 The Affidavit of Service

61. Rule 18.10(1) *Rules of Court*

With every method of service, except service on a solicitor, the server must complete an Affidavit of Service (Form 18B).[61] If a friend is serving the documents for you, you can get the form and leave the dates blank for your friend to fill in. The server must sign the affidavit in front of a Commissioner of Oaths. See Section 3.5 on "Swearing to the Documents". **Take or send the Affidavit of Service to the court office at least 5 days before the date of the court hearing.**

There are examples of affidavits of service on pages 45 and 46.

8.3 If You Cannot Find the Other Parent[62]

62. Rule 18.04 *Rules of Court*

63. s. 122(1) *Family Services Act*

You can apply to the court for help in finding the other parent's address for a custody or access application.[63]

See Section 6 on "Making a Motion". If you still cannot find the other parent or the other parent is avoiding service, the above methods will not work. You may need to consult a lawyer if you have this problem. If the court sees that personal service is impractical, it may make an order for service in a different way. One example is a newspaper ad. You can make a motion asking the court to allow different service. See Section 6 on "Making a Motion". Include an affidavit containing the facts that explain why you need this kind of service.

9. FILING THE TRIAL RECORD

This section does not apply to you if you are using Form 73A.

If you are using Form 73AA, you do not have a court date at this point. You must ask for a court date after the time for the other parent to reply has expired.[64] You should do this within six months after serving the other parent. Either you or the other parent can ask for a court date.[65] You do this by filing the Trial Record.

64. Rule 73.17.1(10) *Rules of Court*

65. Rule 73.17.1(10) *Rules of Court*

66. Rule 73.17.1(11) and (12) *Rules of Court*

What to put in the Trial Record[66]

- a **cover page** called the "Trial Record". At the top it shows the names of each parent, the applicant and the respondent. Then underneath it shows their names, addresses and phone numbers. If either person has a lawyer, you put that in the space underneath instead.
- an **index**, which is like a table of contents. It lists all the documents in the Trial Record. You number the document pages and show the page numbers in the index.
- a **copy** of all the documents involved in the court application so far. Include all documents prepared by both you and the other parent.
- a **Certificate of Readiness**[67] (Form 47B). When you prepare this form, make any necessary changes so the certificate is accurate for your situation. You must estimate how long the court hearing may take. That will depend on factors such as the number of witnesses. For a disputed custody application you probably need a minimum of one day.

There is an example of a cover page on page 48.

There is an example of an index on page 49.

There is an example of a certificate of readiness on page 50.

67. "Forms", Vol. 2 *Rules of Court*

Staple or clip the documents together in the order shown in the index. Keep a copy for yourself. Deliver the Trial Record to the court office.

68. Rule 73.17.1(13) *Rules of Court*

See Section 7 on "Filing Your Documents at the Court Office". The staff will assign a date for the hearing.[68] The court office sends a *Notice of Hearing* to you and the other parent. This notice tells you when the hearing is. It may be several months before the hearing takes place.

10. RESPONDING TO A NOTICE OF APPLICATION

Checklist of Steps to Respond to a Notice of Application			
Steps to Take:			**See Section No.**
✓ Read the Notice of Application carefully.			
✓ Consider your options and decide if you must make your own reply.			2.1
✓ Prepare your documents.			3 and 10
✓ Swear to the Financial Statement.			3.5
✓ Look at the Notice of Application to see if it is Form 73A or 73AA.			
If it is 73A:		If it is 73AA:	
• File your documents.	7	• File your documents.	7
		• Serve your documents.	8
✓ Prepare for court.			11 and 12

10.1 What Does It Mean if I Receive a Notice of Application?

69. This is not a form. You must create it yourself.

If you receive a Notice of Application it tells you that court proceedings have begun. If possible, see a lawyer immediately. See Section 2.1 on "Alternatives and Options".

70. Rule 73.09(1) and Rule 73.17.1(7) *Rules of Court*

It is important to act quickly.

However, if this is not possible you can prepare the documents yourself. If you **disagree** with what the applicant wants or if you want to ask the court for something else, you **must file a Responding Document** with the court.[69] For example, if the applicant is asking for sole custody, you may want to ask for access to visit the child. It is important to act quickly because you only have **20 days from the date you were served** with the Notice of Application to file or serve your Response.[70] You have longer if you are served outside New Brunswick.

10.2 Preparing the Documents

Section 3 "What You Should Know About Preparing Documents" explains how to prepare documents for court.

To respond to a Notice of Application, prepare the following documents:

- **Responding Document**
- **Financial Statement (Form 72J)**

There is an example of a Response on page 59.

10.2.1 The Responding Document

The Responding Document is not a form; rather it is an affidavit that you must prepare and file with the court if you wish to oppose an Application (See example on page 59). In a Responding document you tell the court why you disagree with what the other parent is requesting (why the court should refuse the Application). If you are asking the court to do anything in addition to refusing the Application, write what you would like the court to order, for example, if you want custody or access. Also put your address, the language you will use at the hearing (English or French) and your phone number. You must swear to or affirm the Responding Document before a Commissioner of Oaths.

10.2.2 The Financial Statement

You must put a Financial Statement (Form 72J) with your Responding Document. Section 3.4 gives instructions on filling out the Financial Statement. **You must file a Financial Statement with the court 20 days after you receive the Notice of Application, even if you are not going to oppose the application.**[71]

71. Rule 73.11(1)(b) and Rule 73.17.1(8) *Rules of Court*

10.3 The Procedure

There are two forms of the Notice of Application, Form 73A and Form 73AA. The procedure from this point depends on which form you receive.

- **If you received Form 73A, go to Section 10.3.1.**
- **If you received Form 73AA, go to Section 10.3.2.**

10.3.1 Response to Form 73A

If you receive Form 73A, first deliver your Responding Document and Financial Statement to the court office. See Section 7 on "Filing Your Documents at the Court Office". You have 20 days to deliver your Responding Document after you receive the Notice of Application.[72] In practice this time can be slightly longer. It may be possible to respond after this period as long as the court has not made a decision in the meantime, though adding delays can agitate the court. After you file your Responding Document, along with copies for the other party, the court administrator will serve a copy on the person who started the application.

72. Rule 73.09(1) *Rules of Court*

10.3.2 Response to Form 73AA

If you receive Form 73AA, you must serve your Responding Document and Financial Statement on the person who sent the Notice of Application (the *applicant*) before you deliver them to the court.[73] See Section 8 on "Serving Documents". Then you must file the documents at the court. See Section 7 on "Filing Your Documents at the Court Office". Include the Affidavit of Service. You must file the documents within 20 days if you received the Notice of Application in Canada or the United States.[74] You may have longer if you were served elsewhere. You may still be able to act after the time limit, but it may mean that the court makes decisions in your absence. At this point, you can wait until the applicant applies for a date for the court hearing, or you can apply yourself. To do this you must file the Trial Record.[75] See Section 9 on "Filing the Trial Record".

73. Rule 73.17.1(7) *Rules of Court*

74. Rule 73.17.1(7) *Rules of Court*

75. Rule 73.17.(11) *Rules of Court*

10.4 What If I do not Respond?

If you do not file a Responding Document, then the court can make a reasonable conclusion.[76] This may mean that the court will assume that you are not going to dispute the application. The court could then make an order. Even if you do not file a Responding Document, you can still present your side at the court hearing. However, this could create delay and inconvenience the court.

76. Rule 73.11(4) *Rules of Court*

11. PREPARING FOR THE COURT HEARING

You should seriously consider hiring a lawyer to represent you at the court hearing.

The court has a lot of experience dealing with family matters. The court wants to know about you and your children, and the reasons why you should have custody or access. The judge does not want a detailed account of your past arguments with the other parent. It is important that you do not appear angry, bitter or vindictive. Your job is to present your case as clearly as you can. Then the decision is up to the judge.

11.1 Proving Your Case

11.1.1 Evidence

77. Many books deal with this topic. Visit your local law library or bookstore for more information.

In court, you provide information to show the judge that what you are saying is true. This information is evidence. The court has rules about what evidence you can use.[77] If there is a question about evidence then the judge decides. One basic rule is that you can use information as evidence if it is relevant to something that you are trying to prove. For example, if you are trying to prove that the child is settled with you, then it is relevant to bring school reports as evidence to show the court that the child is settled. Another important rule is that you cannot tell the court information that someone else told you, unless it was the other parent. For example, if your neighbour saw something that you want the court to hear, ask the neighbour to be a witness.

11.1.2 Best Interests of the Child

Try to paint a picture of the daily care of your child for the court.

Think about what you want to tell the court. How can you show the judge that what you are asking for is in the best interests of the child? See Section 2.5 on the "Best Interests of the Child" and the definition in the glossary. Be sure to mention all the facts that support your arguments. These facts could include past incidents and the circumstances relating to the care of the child. The court needs to know about your child's life. You should know that the court does not consider a parent's past behaviour unless it is relevant to that person's ability to act as a parent.

11.2 Witnesses

11.2.1 The Role of Witnesses

Bring witnesses who know about your child's circumstances.

Witnesses provide evidence in person at a court hearing. Anyone who has firsthand information about your case can be a witness. You will be a witness and what you say on the witness stand is evidence for the court to consider. However, it is also important to provide other evidence. For example, you can bring witnesses who know about your child's circumstances. This might include grandparents, teachers, babysitters, and other people who can tell the court about your child's care and needs. This can help the court decide what is in the child's best interests.

11.2.2 Contacting Witnesses

Before the court date, you should contact any witnesses who can tell the court information that supports your case. It is up to you to tell them the time and place of the hearing in advance. You should also send the other parent a list of your witnesses before the court hearing.

11.2.3 Summons

If a witness might not show up for the hearing, you can require that witness to come to court with a form called a Summons to Witness (Form 55A).[78] This can be useful because if your witness does not show up and you have not served a summons then the judge may not give you an adjournment. You can get a Summons to Witness form at the court office. It is your responsibility to serve the summons on the witness. You are also responsible for providing your witnesses with $35 fee for each day of trial you expect them to be there. See Section 8 on "Serving Documents". You may also have to pay for travel ($0.20/km) and overnight accommodation ($30/night) if the witness does not live close to the court.[79]

78. Rule 73.13(1) *Rules of Court*

79. Rule 59.14, Tariff "D", *Rules of Court*

11.3 Other Evidence

11.3.1 Documents

You need to have certain documents to show the court. These might include birth certificates, a marriage certificate, and the children's school records such as report cards. If you have a marriage contract or a separation agreement, take them to court. In some circumstances, you may also bring documents such as letters, psychological reports, or the children's medical records. Always try to get the original documents to show the court. For birth and marriage certificates, get certified copies from the Vital Statistics office in the province where you were married. You should send copies of the documents to the other parent before the hearing.

You can find "Vital Statistics" for New Brunswick in the provincial government blue pages of the phone book under Service New Brunswick.

11.3.2 Reports

Sometimes a report from a psychological or social evaluation is useful evidence. If you think that you need an evaluation and the other person will not agree, you can make a motion asking the court to order one.[80] You should consult a lawyer for this. There is assistance available to help with the cost of an evaluation called the *Court-Ordered Evaluations Support Program* (C-OESP). You may be eligible for full or partial assistance. The level of assistance available is based on your income. If the Minister of Social Development covers your costs, you do not have to apply for C-OESP. If you receive legal aid from the New Brunswick Legal Aid Service Commission you are not eligible to apply.

80. s. 8 *Family Services Act*

For more information on how to apply, where to find a qualified evaluator, or any other related question, call the **Family Law Information Line** toll free at 1(888)236-2444, or (506)444-3855 in Fredericton. Also see the pamphlet entitled, "**Court-Ordered Evaluations Support Program** (C-OESP)", published by and available at Public Legal Education and Information Service of New Brunswick 1-888-236-2444 or www.familylawnb.ca.

11.4 Organizing Yourself

Try to present your arguments logically.

When preparing for trial it is helpful to think carefully about how you will organize and present your case. Write notes to help you remember what to say first, second and so on. If you are bringing witnesses, think carefully about the order in which you want them to speak. Some people find it helpful to make a checklist of witnesses and of the facts and arguments they want to present, to make sure that nothing is left out.

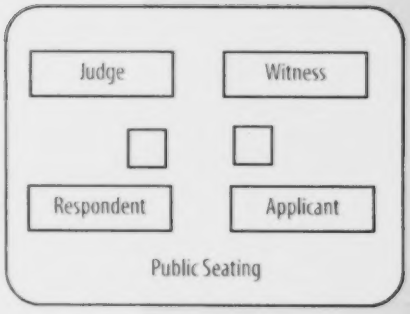
Hints to Help You Prepare

- **Gather all the documents that concern your case.** Bring a copy of all the court documents and any other documents such as birth certificates with you to court. Know what is in the documents and keep them in order. You may find it helpful to keep your documents in a folder with tabs to mark the sections so you can find information easily.
- **Organize your thoughts.** Make a list of what you want to say at court so you can present your case clearly. Note details like dates to help you remember. Try to bring up events in order so they are easy to follow.
- **Organize** the questions you will ask your witnesses
- **Practice** what you want to say, but do not memorize it.
- **Be ready** to answer questions from the judge or the other party.

12. GOING TO COURT

12.1 The Courtroom

The judge sits at the front of the courtroom. A designated court official and a court stenographer also sit at the front. The stenographer has a tape recorder. There are two tables in the middle of the courtroom, with chairs in front of them. This is normally where the lawyers for both parties sit. If you represent yourself, this is where you will sit or stand, facing the judge. Normally the person making the application sits on the right side. The person responding to it sits on the left side. There are also chairs in the back for members of the public and lawyers on other matters. Witnesses can normally sit in the public seating area. If you are not sure where to sit check with the court official.



12.2 Postponements of the Court Hearing[81]

81. Rule 73.14 *Rules of Court*

12.2.1 When You Arrive

A court official may speak to you before you go into court to see if you are ready to proceed. If the other parent is not there, you should tell the court official. The judge may go ahead with the hearing or may postpone (adjourn) the hearing until a later date.

If you decide not to go ahead with the proceedings, you should contact the court office before the hearing.

12.2.2 If the Other Parent is Not There

If the other parent has received the Notice of Application and you have filed your Affidavit of Service, you can ask the judge to go ahead in his or her absence. If the hearing goes ahead, the court order will be enforceable against the other parent even though he or she was not there. If he or she has not been served, the judge will postpone the hearing so you can try to notify the other parent.

12.2.3 Common Reasons

Some common reasons for postponements are:

- Someone needs time to get a lawyer.
- Someone needs time to prepare a document for the court.
- You and the other parent are negotiating a settlement and you need time to do so.
- The judge thinks that you and the other parent may be able to agree on some of the questions with the help of mediation services[82]

82. s. 131 *Family Services Act*

12.3 The Day of the Hearing

12.3.1 At the Beginning

At the hearing, stand up when the court official calls your name. When the judge asks, tell the judge that you do not have a lawyer and you are acting on your own behalf.

12.3.2 If You Have Agreed

If the other parent is there and you both have agreed on the terms of custody and access, you should tell the judge right away. The judge may make an order based on that agreement. Otherwise, you present your case to the judge.

12.3.3 Presenting Your Case

When witnesses present evidence in court it is called testimony. You call witnesses to speak (testify). When it is time for the witnesses the judge will ask if you want to call any witnesses. If you want to call a witness, you can say "Now I would like to call Mr. Jones to the stand to testify." To present your own evidence, say, "Now I would like to testify on my own behalf". A witness goes to the witness box next to the judge. Then a court official asks the witness to take an oath that he or she is speaking the truth. Lying under oath is a criminal offence.[83] When a witness is speaking, he or she should look at the person who asked the question or at the judge.

83. s. 131.(1) *Criminal Code*

12.3.4 Order of Presentation

The person making the application goes first.[84] He or she calls every witness in order, including him/herself. If you call a witness, you ask your questions first. As each witness finishes, the other side can ask the witness questions. When the person making the application finishes presenting evidence, it is the other parent's turn. He or she calls witnesses to present evidence. When each witness finishes, the other side can ask questions. Normally the judge will ask if you want to ask any questions.

84. Rule 54.07 *Rules of Court*

12.4 The Court Order[85]

85. Rule 60.02 *Rules of Court*

The judge may tell you the decision at the end of the hearing. However, sometimes the judge may want time to think. If so, the judge will make a written decision after the hearing is over.

The court administrator will send you a copy of the court order when the judge makes a decision.

Tips for the Hearing

- *Bring a friend* for moral support.
- *Wear appropriate clothes.* There is no dress code at court, but you should avoid jeans, T-shirts and low-cut dresses.
- *Be early.* Arrive at court about 15 minutes before court starts.
- *Stand up* when the judge enters the courtroom. Remain standing until the judge sits down.
- *Be respectful* to the judge. When it is your turn to speak, speak directly to the judge. You should address the judge as "Sir" or "Madam".
- *Take a moment to think* before you answer a question.
- *Do not interrupt the judge* or anyone else when they are speaking. Do not sigh or shrug your shoulders in disbelief. If you disagree with someone, make a note of it. Then bring it up when it is your turn to ask a question, give evidence or argue.
- *Get a babysitter* if necessary.

13. ONCE YOU HAVE A COURT ORDER

13.1 Appeals[86]

86. Rule 62 *Rules of Court*

If you are unhappy with the order and if you believe the judge has made an error of law, you may be able to appeal the decision. If you are considering an appeal, you should immediately consult a lawyer. An appeal is a complicated process and you will need a lawyer to help you. You have thirty days to start the appeal process after the decision.[87]

87. Rule 62.05(2)(a) *Rules of Court*

Once there is a court order, both parents must follow it. However, since family problems do not always end with a court order, you may need to know how to enforce or change it.

13.2 Enforcing a Court Order

13.2.1 Contempt of Court

In general when a person does not follow a court order, you can ask the court to hold that person in contempt of court.[88] Keep a record of what happens. If a parent persists in defying a court order, you should see a lawyer. Although a contempt order is available for many situations, you should know that the court will not force a parent to visit a child.

88. s. 130.7 *Family Services Act* and Rule 76.03 *Rules of Court*

13.2.2 Some Specific Family Law Situations

In addition to the contempt procedure, the *Family Services Act* sets out solutions for the following situations.

- **Locating the Other Parent.** You can apply to the court for help if you need to know the location of the other parent to enforce a custody or access order.[89]
- **Unlawfully Keeping a Child.** If someone is unlawfully withholding the child from you, you can apply to the court for help. The court can order the police to find and take the child to you.[90] For example, the parent with access may refuse to return the child to the parent with custody, or the parent with custody may refuse to allow the access ordered by the court.
- **Taking a Child Away.** You can also apply to the court for help if you have a good reason to believe that the parent with custody is going to take the child out of New Brunswick against a court order or separation agreement. You can also apply if you believe that the parent with access is going to take a child out of the province and the child is not likely to return. The court can take steps to make sure that the parent does not leave with the child.[91]

89. s. 122(1) *Family Services Act*

90. s. 132.1(2) *Family Services Act*

91. s. 132.2 *Family Services Act*

If any of these situations apply to you, you can make a motion to the court to enforce your custody or access order. See Section 6 on "Making a Motion".

13.2.3 Abduction

In addition to the above family law solutions, abduction is a criminal offence.[92] It is a crime for a parent, or anyone else, to remove or hide a child under the age of 14 without the consent of the person with custody or to deprive a parent of a child. If your child is abducted you should contact the police.

92. ss. 281-283 *Criminal Code*

13.2.4 Family Support Orders Service

This provincial service helps enforce orders for child or spousal support. Any order for support that a New Brunswick court makes will automatically be filed with this service.[93] For more information get the PLEIS pamphlets on the *Family Support Orders Service* (FSOS) and on *Child Support and Spousal Support*.

93. s. 5(1) *Support Enforcement Act*, c. S-15.5, S.N.B.

The PLEIS address is shown in Section 2.2.3 page 5.

13.3 Changing a Court Order

13.3.1 Agreement

Sometimes people agree to change the arrangements after the court has made an order. Before going to court you should try mediation to come to an agreement. See Section 2.1 on "Options and Alternatives". If you can come to an agreement on your own or with mediation, you can get a consent order. You can use your agreement to ask a judge to make a consent order for a variation, discharge or suspension of a child support order, or an order for the support of a child over the age of majority. You may file the consent order, with a copy of the support agreement and any income information, in the judicial district where one of you ordinarily lives. If mediation fails, you may have to hire a lawyer or proceed by yourself.

13.3.2 Applying to Court

If you cannot agree, you can ask the court to change an existing custody or access order if the circumstances surrounding the child have changed significantly.[94] The court will **not** conduct a rehearing of the original case. You must also show the judge that changing the order is what is best for the child. Remember that the final decision is always up to the judge.

94. s. 129(2) and (3) *Family Services Act*

Examples of What May Justify Asking the Court to Change a Custody or Access Order

- The child has significant negative behavior changes relating to the custody or access arrangements.
- One of the parents has significant changes in behavior, which affect the custody or access arrangements.
- One of the parents is moving away.

Examples of What May Justify Asking the Court to Change a Child Support Order[95]

- The income of the parent paying support changes.
- The child has unexpected special expenses such as childcare, health care, education or special activities.
- The amount of child support is different from the amount set out in the new child support guidelines. For more information see Section 5.1.2 on "The Guidelines".
- The child has reached the age of majority and is not enrolled fulltime in school or dependent.

95. s. 118(2) *Family Services Act*, s. 14 Federal Child Support Guidelines

13.3.3 What Procedure Do I Use?

The procedure you follow depends on whether you already have a court order.

- If you already have a court order on the matter, you make a motion asking the court to change the previous order. See Section 6 on "Making a Motion".
- If you have an agreement, including a support agreement that was filed with the court, then you must make an application asking the court to make an order. See Section 4 on "Preparing an Application".

14. HARASSMENT PROBLEMS

14.01 If You Are Married

s. 128 *Family Services Act*

If you are worried that your spouse will harass you or your children, you can ask the court to make an order to keep your spouse from molesting, annoying, harassing or interfering with you or your children. This is called a restraining order. You can only ask for this if you are married to the other parent. For example, you may want to ask the court to order the other parent not to harass you while visiting the children if the other parent has physically abused you in the past. (See PLEIS-NB's booklet on Peace Bonds and Restraining Orders.)

14.02 A No Contact Order

s. 132(1)(b) *Family Services Act*

Sometimes when making a custody order in a very serious situation, the court will also order the parent without custody not to enter certain premises, such as the child's home, not to contact the other parent or not to contact the child. It does not matter if you are married or not. For example, you may want to ask the court for a no contact order if the other parent has a history of physically abusing the child.

14.03 The Procedure

You can make these types of requests on your Notice of Application when you are applying for custody or access. See Section 4 on "Preparing An Application for Custody or Access". In addition, you can make a motion asking for an interim order, which will stay in effect until the court makes a final decision after the custody hearing. See Section 6 on "Making a Motion".

Note: There are also criminal remedies to deal with harassment. For example, if the other parent is charged by the police with a crime (such as stalking, assault, uttering threats, etc.) you can ask the court for a no contact provision. Or, you may be able to obtain a peace bond. You can find out more about these options on the PLEIS-NB website.)

15. ADDRESSES OF THE COURT OFFICES BY LIST OF JUDICIAL DISTRICTS AND LEGAL AID OFFICES [96]

96. Schedule A, *Judicature Act*

Bathurst
Court of Queen's Bench, Family Division
P.O. Box 5001, 254 St. Patrick Street
Bathurst NB E2A 3Z9
Court Office: 547-2150

Judicial District of Bathurst
Includes: Gloucester County

Campbellton
Court of Queen's Bench, Family Division
P.O. Box 5001, 157 Water Street
Campbellton NB E3N 3H5
Court Office: 789-2364

Judicial District of Campbellton
Includes: Restigouche County

Edmundston
Court of Queen's Bench, Family Division
P.O. Box 5001, 121 Church Street
Edmundston NB E3V 1J9
Court Office: 735-2029

Judicial District of Edmundston
Includes: Madawaska County and Drummond and Grand Falls

Fredericton
Court of Queen's Bench, Family Division
P.O. Box 6000, 423 Queen Street
Fredericton NB E3B 5H1
Court Office: 453-2015

Judicial District of Fredericton
Includes: York County, Sunbury County, and Queens County

Miramichi
Court of Queen's Bench, Family Division
673 King George Highway
Miramichi NB E1V 1N6
Court Office: 627-4023

Judicial District of Miramichi
Includes: Northumberland County

Moncton
Court of Queen's Bench, Family Division
P.O. Box 5001, 770 Main Street
Moncton NB E1C 8R3
Court Office: 856-2304

Judicial District of Moncton
Includes: Albert County, Westmorland County and Kent County

Saint John
Court of Queen's Bench, Family Division
110 Charlotte Street
Saint John NB E2L 4Y9
Court Office: 658-2560

Judicial District of Saint John
Includes: Charlotte County, Saint John County and Kings County

Woodstock
Court of Queen's Bench, Family Division
P.O. Box 5001, 689 Main Street
Woodstock NB E7M 5C6
Court Office: 325-4414

Judicial District of Woodstock
Includes: Carleton County, Victoria County except Drummond and Grand Falls (see Edmundston)

Addresses for Legal Aid Offices

Bathurst
216 Main St., Suite 205
Bathurst, NB E2A 1A8
506-546-5010

Campbellton
19 Aberdeen St., Suite 201
Campbellton, NB E3N 2J6
506-753-6453

Edmundston
121 Church St., local 209
Edmundston, NB E3V 1J9
506-735-4213

Fredericton
356 Queen St.
Fredericton, NB E3B 1B2
506-444-2776

Miramichi
673 King George Hwy
Miramichi Law Courts
Miramichi, NB E1V 1N6
506-622-1061

Moncton
860 Main St., Suite 402 & 403
Moncton, NB E1C 1G2
506-853-7300

Saint John (domestic)
110 Charlotte St., Suite 229
Saint John, NB E2L 2J3
506-633-6030

Tracadie-Sheila
3512 Principale St., Suite 1
Tracadie-Sheila, NB E1X 1C9
506-395-1507

Woodstock
633 Main St., Unit 122
Woodstock, NB E7M 2C6
506-328-8127

16. GLOSSARY OF TERMS

The following terms are defined by both the legislation (*Family Services Act*) and the cases that interpret that legislation.

Abduction: unlawfully removing a child under the age of 16 by someone without the permission of the parent with custody. If the person removing the child is a parent, they can be charged with abduction if the child is below the age of 14.[97]

97. ss. 280-283 *Criminal Code*

Access: the right of a child and a parent without custody to spend time together. It is sometimes known as visiting rights.

Adjournment: postponing a court hearing until another time.

Affidavit: a signed written statement that is sworn or affirmed.

Applicant: a person who makes an application to the court.

"Best interests of the child": this standard is the only consideration of a judge when deciding custody and access. It is defined in the *Family Services Act* [98] as:

98. s. 1 *Family Services Act*

"the best interests of the child under the circumstances taking into consideration:

(a) the mental, emotional and physical health of the child and his need for appropriate care or treatment, or both;

(b) the views and preferences of the child, where such views and preferences can be reasonably ascertained;

(c) the effect upon the child of any disruption of the child's sense of continuity;

(d) the love, affection and ties that exist between the child and each person to whom the child's custody is entrusted, each person to whom access to the child is granted and, where appropriate, each sibling of the child and, where appropriate, each grandparent of the child;

(e) the merits of any plan proposed by the Minister;

(f) the need to provide a secure environment that would permit the child to become a useful and productive member of society through the achievement of his full potential according to his individual capacity; and

(g) the child's cultural and religious heritage."

Child: a person who has not reached the age of majority. Under the *Family Services Act*, a child is an unmarried person under the age of 19.[99]

99. s. 1 *Family Services Act*

Child Support: parents have a legal obligation to financially support their children.[100] A parent without custody pays child support to the parent with custody to help provide for the child. Parents can arrange payments by agreement or by court order.

100. s. 113 *Family Services Act*

101. s. 130.7 *Family Services Act* and Rule 76 *Rules of Court*

Commissioner of Oaths: a person who is legally appointed to administer an oath.

Contempt of Court: interfering with the administration of justice or ignoring the *Rules of Court*.[101]

Court Order: a legally binding document made by a court and signed by a judge.

Court Administrator: the person who runs the administrative side of the Court of Queen's Bench, Family Division.

Custody: the care and control of a child.

102. s. 1 *Family Services Act*

Custody Agreement: any agreement with respect to custody, care or control of a child.[102]

103. s. 1 *Family Services Act*

Custody Order: a court order that deals with custody, care or control of a child.[103]

De facto custody: an informal custody arrangement. Often after a break up the children will live with one parent without making formal legal arrangements for custody.

Divorce: the legal end of a marriage.

Domestic Legal Aid: a program of the New Brunswick Legal Aid Services Commission that helps people in financial need with some family law matters.

Evidence: testimony by witnesses, objects identified by witnesses or documents that are presented to the court to help the court reach a decision.

Family Law: the legal rights and obligations between family members, husband and wife, parent and child, and unmarried couples.

Family Division, Court of Queen's Bench: a provincial superior court with jurisdiction over all matters in family law under provincial or federal legislation. It provides people who can help explain court services and can help mediate a family dispute.

Habitually Resident: Under the *Family Services Act*, a child is habitually resident in the place where the child last lived, either:

a) with both parents,

b) with one parent under a separation agreement, a court order or with the implied consent of the other, or

c) with a person other than a parent on a permanent basis for a significant period of time.[104]

104. s. 130(2) *Family Services Act*

Hearing: a proceeding: the presentation of evidence in court.

105. Rule 73.15 *Rules of Court*

Interim Order: a court order that only lasts temporarily, usually until there is a final decision in the case.[105]

106. s. 129(1) *Family Services Act*

Joint Custody: a custody arrangement where both parents continue to share the responsibility to care for the child. Both parents make the decisions about the child's upbringing, even though the child may live with only one. Both parents must be willing to co-operate with each other.[106]

Judgment: the decision of the court in a legal proceeding.

107. s. 130(1) *Family Services Act*

Jurisdiction: the court's authority to hear the case before it.[107]

Maintenance: another word for child and spousal support.

Marriage: Although sometimes the law treats people who live together the same as married people, you are never married until you go through a legal marriage ceremony.

Mediation: a way to settle family matters through negotiation with the help of a third person. The purpose of mediation is to help people work out an agreement more constructively.

Motion: a procedure where a party asks the court to make a decision on a certain question before, during or after a court proceeding.

Oath: a legally binding promise to tell the truth made by swearing on the Bible or other religious document, for example, the Koran.[108] A person who does not want to swear on a religious document makes an affirmation. This is as legally binding as an oath.[109]

Parent: a mother or father, an official guardian or a person with whom the child lives who has shown an intention to treat the child as his or her family.[110]

Party: someone involved in a court proceeding.

Perjury: to tell a lie in court after having sworn to tell the truth. It is a criminal offence.[111]

Proceedings: any matter, criminal or civil, which goes to court.

Relevant: Information is relevant if it helps to show a fact that will decide the issue.

Respondent: the person who can reply to a Notice of Application or motion when someone else makes an application to the court.

Separation Agreement: a written agreement between spouses who intend to live apart. It can include arrangements for custody and access, spousal and child support payments, and other matters.

Sole Custody: a custody arrangement where only one parent has the legal right and responsibility to provide for the day-to-day care of the child, and to make the decisions about the child's upbringing.

Spousal Support: the money that a spouse or a common law partner receives from a separated spouse or partner to help pay for living expenses when the couple separates. Support is usually paid on a monthly basis.[112]

Spouse: a legally married person or in some cases a person in a voidable or void marriage, but not common law partners in general.[113]

Summons: a document telling a person when and where he or she must appear as a witness.

Supervised Access: the parent without custody can only visit the child in the presence of the custodial parent or another adult.

Support Order: a court order to pay spousal or child financial support.

Testimony: statements made by a witness under oath in court.

Visitation Right: see access, above.

Under Oath: having taken an oath, the witness is bound to only tell the truth or that person is liable for perjury.

Witness: a person who testifies in court because he or she has some information about the case.

108. s. 13 *Evidence Act*, c. E-11, S.N.B.

109. s. 14 *Evidence Act*, c. E-11. S.N.B.

110. s. 1 *Family Services Act*

111. s. 131 *Criminal Code*

112. s. 112 *Family Services Act*

113. s. 111 *Family Services Act*

17. A QUICK LOOK AT THE FAMILY SERVICES ACT

This table points to some of the sections in Part VII of the *Family Services Act*, which may apply to custody, access and support applications. However, other sections and other legislation may also apply. If you need more information you should consult a lawyer.

Section Number	Topic of the Section
1	Definitions
111	Definitions
112(1)	A spouse's support obligation
113	A parent's support obligation
115	Application for support of a dependant
115(6)	Circumstances considered for spousal support
116	Court orders
118	Changing a support order
122	Order to provide address of proposed respondent
128	Restraining order for spouse living separate and apart
129	Custody and access
130	Jurisdiction of court
132	Additional terms of a custody order
132.1	Order to apprehend child
132.2	Order to prevent removal of child from Province

For information on where to get a copy of the *Family Services Act*, see Section 2.2.2.

This table is accurate as of March 2010.

18. EXAMPLES OF COURT DOCUMENTS

In the examples that follow sometimes you will see information that applies to the people in the examples below. You must fill in the correct information to reflect your own situation. You can use the numbered instructions along the side of the page to help you fill in your own information.

Do NOT photocopy these examples. Documents must be filed with the Court. You can get the forms you need on the Family Law NB website at www.familylawnb.ca or purchase hardcopies at any Service New Brunswick Office.

Do NOT send your documents to Public Legal Education and Information Service of New Brunswick (PLEIS-NB).

Example Fact Situation

The following fact situation and sample documents are presented as examples of how an application for custody and support might proceed:

Mary and John Smith were married in 1999. In March 2001, they had a daughter, Kimberly Ann. In January 2003, they had a son, David Scott. In June 2008, Mary and John separated. Both children are living with Mary.

John still works as an accountant, the same job that he had when Mary and John got married. Mary works as a store clerk. After they separated, John sent Mary $500 in July and $500 in August. No money has arrived since August 2008.

First Mary and John try to negotiate a separation agreement. It does not go well so they make an appointment for mediation. They still cannot agree. Mary wants sole custody of the children and financial support for the children. She considers her options and decides there is no way she can afford a lawyer. She decides to make her own application to the court. When John receives the notice that Mary is applying for sole custody, he decides to ask the court for access so he can visit the children.

Example of the Information at the Beginning of Every Document of the Court

1. The Court File Number which you can find on the first page of the Notice of Application.

[1] Court File Number 1301-0000

2. The name of the judicial district where you are applying to the court. See Section 15 for the list or the *Divorce Act*.

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

3. Your name.

4. The name of the other parent.

Between: Mary Smith, [3] Applicant

- and-

John Smith, [4] Respondent

Example of a Covering Letter

1. Your address

456 Main St.
Smalltown, NB
E3A 1Z1 [1]

2. The date (day, month and year)

June 1, 2009 [2]

3. Address of the court office where you are sending the documents. See Section 15 for the addresses.

Office of the Administrator [3]
Court of Queen's Bench, Family Division
Justice Building, Queen Street
P. O. Box 6000
Fredericton, NB
E3B 5H1

Dear Sir or Madam:

You will find enclosed for filing purposes a Notice of Application and the attached documents.

Please return the documents to me at the above address.

Yours truly,

Mary Smith [4]

4. Your signature

5. Your name typed or clearly printed

Mary Smith [5]

Enclosures

Example of an Affidavit for Personal Service

[1] Court File Number 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between:	Mary Smith, [3]	Applicant
	- and-	
	John Smith, [4]	Respondent

Affidavit of Service
(Form 18B)

I, Jane Doe [5], of 123 Main Street [6] in the city of Smalltown [7], in the County of York [8], in the Province of New Brunswick, teacher [9], make oath and say as follows:

1. On the _____ [10] day of _____, 20___, I served the respondent with the attached Notice of Application marked "A" by leaving a copy with him [11] at 789 Queen Street, Smalltown, New Brunswick.[12]

2. I was able to identify the person served by means of the fact that the respondent[13] admitted to being John Smith[14], spouse of Mary Smith. The respondent showed me his New Brunswick driver's license [15] in the name of John Smith, number 000000, bearing the respondent's signature, which is the same as the signature on the back of the Notice of Application. [16]

SWORN before me at [17]
_____, in the County of York,
in the Province of New Brunswick,
this _____ day of _____, 20____.

_____
Commissioner of Oaths

_____
Jane Doe [18]

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. The name of the person serving the documents (your friend).

6. Your friend's street address.

7. The place where your friend lives.

8. The county where your friend lives.

9. Your friend's occupation, for example teacher or homemaker.

10. Leave blanks to fill in the date (day, month and year) that your friend serves the documents.

11. "Him" or "her".

12. The address where your friend served the documents on the other parent.

13. Write down how your friend knew who the other parent was.

14. The name of the other parent. If you are married, add "spouse of" and your name.

15. If the other parent showed your friend a piece of identification, writedown the type of identification and its number.

16. If the other parent signed the back of the Notice of Application, add this information.

17. Your friend must take this affidavit to a commissioner of oaths and sign it. See Section 3.5 for more information. Leave blanks for the date and signatures.

18. Your friend's name, typed or clearly written.

1-4. Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. The name of the person serving the documents (your friend).

6. Your friend's street address.

7. The place where your friend lives.

8. The county where your friend lives.

9. Your friend's occupation, for example teacher or homemaker.

10. Leave blanks to fill in the date (day, month and year) that your friend serves the documents.

11. If you decide to include an Acknowledgement of Receipt Card, you must add what is written in brackets.

12. The address of the other parent where your friend sent the documents.

13. Write down the method that you used and leave out the other one.

14. Your friend must take this affidavit to a commissioner of oaths and sign it. Leave blanks for the date and signatures.

15. Your friend's name clearly typed or written.

Example of an Affidavit of Service by Registered Mail

[1] Court File Number 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between:	Mary Smith, [3]	Applicant
	- and-	
	John Smith, [4]	Respondent

Affidavit of Service
(Form 18B)

I, Jane Doe [5], of 123 Main Street [6] in the city of Smalltown [7], in the County of York [8], in the Province of New Brunswick, teacher [9], make oath and say as follows:

1. On the _____[10] day of _____, 20__, I served the respondent with the attached [11] document marked "A" by sending a copy of the document [together with the Acknowledgment of Receipt Card] by prepaid mail addressed to the respondent at 789 Queen Street, Smalltown, New Brunswick, his last known address. [12]

2. On the _____day of _____, 20___, [the attached Acknowledgement of Receipt [13] Card] [or] [post office receipt] marked "B" bearing a signature which appears to be the signature of the respondent was returned to and received by me.

SWORN before me at
_____,
in the County of York, [14]
in the Province of New Brunswick, this
_____ day of _____, 20____.

_____
Commissioner of Oaths

_____
Jane Doe[15]

Example of a Receipt Card

[1] Court File Number 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between: Mary Smith, [3] Applicant

- and-

John Smith, [4] Respondent

Acknowledgement of Receipt Card
(Form 18A)

TO: John Smith [5]

You are served by mail with the documents enclosed with this card pursuant to the Rules of Court.

You MUST complete and sign the acknowledgement below and mail this card within 3 days of the date you receive it or you may have to pay the costs of the Sheriff or some other person serving you personally.

Acknowledgement of Receipt

I hereby acknowledge that on the ____[6] day of _____, 20____, I received the following documents:

a) copy of the Notice of Application together with attached documents.

b) Financial Statement.

[7]

_____

John Smith [8]

NOTE: The full address of the sender appears on the reverse side of the Acknowledgement of Receipt Card. Do not forget to put a stamp on the card before mailing it.

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. The name of the other parent.

6. Leave blanks for the other parent to fill in the date.

7. Leave a blank for the other parent's signature.

8. The name of the other parent, typed or clearly printed.

Example of a Trial Record Cover Page

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. The date (day, month, year)

6. Your name, address and telephone number.

7. The name of the other parent, his or her address and phone number.

[1] Court File Number 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between:	Mary Smith, [3]	Applicant
	- and-	
	John Smith, [4]	Respondent

Trial Record

June 1, 2008 [5]

Mary Smith, Applicant
456 Main Street
Smalltown, NB
E3A 1Z1
Telephone: 555-0000 [6]

John Smith, Respondent
789 Queen Street
Smalltown, NB
E3A 1Z2
Telephone: 555-1111 [7]

Example of an Index for the Trial Record

[1] Court File Number 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between:	Mary Smith, [3]	Applicant
	- and-	
	John Smith, [4]	Respondent

Index [5]

1. Notice of Application of Mary Smith [6]
2. Affidavit of Service of the Notice of Application on the Respondent John Smith [7]
3. Certificate of Readiness
4. Affidavit of Mary Smith
5. Financial Statement of Mary Smith
6. Financial Statement of John Smith

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. A list of all the documents that you and the other parent have prepared for the court up to now.

6. Your name, (if you started the application).

7. The name of the other parent. (the person who received the notice of application.)

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. Your name.

6. The amount of time you think the court will take.

7. English or French, the language you will use at the court hearing.

8. If you need an interpreter, leave out the "not".

9. The name of the place where you signed the certificate.

10. The date (day, month, year) that you signed the certificate.

11. Your signature.

12. Your name, typed or printed clearly.

Example of a Certificate of Readiness

[1] Court File Number 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between:	Mary Smith, [3]	Applicant
	- and-	
	John Smith, [4]	Respondent

Certificate of Readiness
Form 47B

I, ____Mary Smith [5] _____, applicant, certify that I believe all pre-trial procedures have been completed and that we are now ready to proceed to trial.

Having consulted with the respondent, I inform the court that:

a) we estimate the trial of the action will take 1 day: [6]
b) the parties intend to use the English language: [7]
c) the services of an interpreter will not be required: [8]

Dated in Smalltown [9], New Brunswick, the 11 _____day of _____, 20 _____.[10]

Mary Smith [11]

Mary Smith [12]

Example of a Notice of Application

[1] Court File Number 1301-0000

N° du dossier: 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between:

Mary Smith, [3] Applicant

- and-

John Smith, [4] Respondent

Cour du banc de la reine du Nouveau-Brunswick
Division de la Famille
Circonscription Judiciaire de _____

ENTRE:

REQUERANT,

-et-

INTIME.

NOTICE OF APPLICATION
(FORM 73AA)

TO: JOHN SMITH [5]

LEGAL PROCEEDINGS HAVE BEEN COMMENCED AGAINST YOU BY FILING THIS NOTICE OF APPLICATION.

If you wish to oppose this application or to assert a right or claim, either you or a New Brunswick lawyer acting on your behalf shall prepare and file a responding document in accordance with the *Rules of Court* and serve it on the applicant or if the applicant has a lawyer, upon the applicant's lawyer at the address shown below and, with proof of such service, file it in this Court Office, within the following times after such service:

(a) if you are served in New Brunswick, **WITHIN 20 DAYS**,

(b) if you are served elsewhere in Canada or the United States of America, **WITHIN 40 DAYS**,

or

(c) if you are served anywhere else, **WITHIN 60 DAYS**.

AVIS DE REQUÊTE
(FORMULE 73AA)

DESTINATAIRE :_____

PAR LE DÉPÔT DU PRÉSENT AVIS DE REQUÊTE, UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE CONTRE VOUS.

Si vous désirez contester cette requête, revendiquer un droit ou former une demande, vous-même ou un avocat du Nouveau-Brunswick chargé de vous représenter devrez rédiger et déposer un document de défense conformément aux *Règles de procédure*, le signifier au requérant ou à son avocat, s'il est représenté par un avocat, à l'adresse indiquée ci-dessous, et le déposer au secrétariat de cette cour avec une preuve de sa signification, dans les délais suivants de la signification:

a) **DANS LES 20 JOURS**, si elle vous est faite au Nouveau-Brunswick,

b) **DANS LES 40 JOURS**, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique,

ou

c) **DANS LES 60 JOURS**, si elle vous est faite ailleurs.

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. The other parent's name.

If you fail to do so,

(a) an order which may affect you may be made in your absence,

or

(b) if the Court is satisfied that your attendance is necessary for a just determination of the application and you are within the jurisdictional limits of the Court, a warrant may be issued directing a peace officer to apprehend you and bring you before the court.

IF THIS NOTICE OF APPLICATION CONTAINS A CLAIM FOR SUPPORT OR CUSTODY, YOU MUST, NOT MORE THAN 20 DAYS AFTER BEING SERVED WITH THIS NOTICE OF APPLICATION, SERVE ON THE APPLICANT YOUR FINANCIAL STATEMENT IN THE FORM PRESCRIBED BY THE RULES OF COURT AND ANY INCOME INFORMATION REQUIRED BY THE REGULATIONS RESPECTING ORDERS FOR CHILD SUPPORT UNDER THE *FAMILY SERVICES ACT*, WHETHER OR NOT YOU WISH TO OPPOSE THE APPLICATION.

IF THIS NOTICE OF APPLICATION CONTAINS A CLAIM UNDER THE *MARITAL PROPERTY ACT*, YOU MUST SERVE WITH YOUR RESPONDING DOCUMENT A STATEMENT OF PROPERTY AND DEBTS OR A STATEMENT OF CONTRIBUTION TO PROPERTY IN THE FORM PRESCRIBED BY THE RULES OF COURT WHETHER OR NOT YOU WISH TO OPPOSE THE APPLICATION.

You are advised that:

(a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

(b the applicant intends to proceed in the English[6] language;

(c) if you intend to proceed in or present evidence in the other official language, an interpreter may be required and you must so advise the administrator at least 7 days before the hearing.

Si vous omettez de la faire,

a) une ordonnance pouvant vous concerner pourra être rendue en votre absence

ou

b) si la cour estime que votre comparution est nécessaire à la solution équitable de la requête, elle pourra émettre un mandat prescrivant à un agent de la paix de vous arrêter et de vous amener devant elle si vous vous trouvez dans le ressort de la cour.

SI LE PRÉSENT AVIS DE REQUÊTE CONTIENT UNE DEMANDE DE SOUTIEN OU DE GARDE D'ENFANTS,VOUS DEVREZ, DANS LES 20 JOURS QUI SUIVENT SA SIGNIFICATION, SIGNIFIER AU REQUÉRANT VOTRE ÉTAT FINANCIER EN LA FORME PRESCRITE PAR LES RÈGLES DE PROCÉDURE AINSI QUE TOUS RENSEIGNEMENTS SUR LE REVENU REQUIS EN VERTU DES RÈGLEMENTS CONCERNANT LES ORDONNANCES DE SOUTIEN POUR ENFANT ÉTABLIS EN VERTU DE LA *LOI SUR LES SERVICES À LA FAMILLE*, QUE VOUS AYEZ OU NON L'INTENTION DE CONTESTER LA REQUÊTE.

SI LE PRÉSENT AVIS DE REQUÊTE CONTIENT UNE DEMANDE EN APPLICATION DE LA *LOI SUR LES BIENS MATRIMONIAUX*, VOUS DEVREZ SIGNIFIER VOTRE DOCUMENT DE DÉFENSE ACCOMPAGNÉ D'UNE DÉCLARATION RELATIVE AUX BIENS ET AUX DETTES OU UNE DÉCLARATIONS D'APPORT À L'ÉGARD DES BIENS EN LA FORME PRESCRITE PAR LES RÈGLES DE PROCÉDURE,QUE VOUS AYEZ OU NON L'INTENTION DE CONTESTER LA REQUÊTE.

Sachez que:

a) dans la présente instance, vous avez le droit d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

b) le requérant a l'intention d'utiliser la langue _____;

c) si vous avez l'intention d'utiliser l'autre langue officielle ou de présenter votre preuve dans cette autre langue, les services d'un interprète pourront être requis et vous devrez en aviser l'administrateur au moins 7 jours avant l'audience.

6. English or French. The language that you will use at the court hearing.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by, _____ Administrator of the Court, at_____ on the____ day of _____, 20___.

_____
(administrator)[7]

_____
_____
_____
(address of court office)

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par_____, administrateur de la cour à_____, le _____, 20___.

_____
(administrateur)

_____
_____
_____
(adresse du secrétariat de la cour)

On the hearing of this application, the applicant intends to apply for an order that (*state precisely the relief being sought*).[8]

À l'audition de la requête, le requérant a l'intention de demander qu'une ordonnance soit rendue relativement à *(préciser les mesures de redressement sollicitées)*

1. Custody of Kimberly Ann Smith, born March 15, 2001, and David Scott Smith, born January 23, 2003, be granted to Mary Smith, the Applicant, under section 129(2) of the *Family Services Act*; and

2. John Smith, the Respondent, pay support for the children of the marriage, Kimberly Smith and David Smith, under sections 115(1), 112(1) and 113 of the *Family Services Act*,

   AND all support payments be indexed to the Cost of Living index

   AND these payments be made payable retroactively from a date deemed appropriate by the Court under section 116(1)(i) of the above mentioned Act.

   AND all support payments be made payable to the Court of Queen's Bench, Family Division, Fredericton, New Brunswick, under section 116(1)(h) of the above mentioned Act; and

3. The Respondent be required to continue all insurance, health and dental plans to which he may be entitled through his employer for the benefit of his wife, Mary Smith, and for the benefit of the children, Kimberly Smith and David Smith.

4. Costs, and

5. Any other order that the Court considers just.

7. Leave these spaces blank for the staff at the court office to fill in.

8. Write down exactly what court order you are asking the court to make.

9. Write in the details of your situation.

10. The place and county where you live.

11. The documents that you will use for the court hearing.

12. Write down if there were any court proceedings before about the same subject, for example custody, access or support.

13. Write down if you and the other parent have any written or spoken agreements about the same subject, for example custody, access or support.

14. The place where you sign the notice of application.

15. The date (day, month and year) that you sign the notice of application.

16. Your signature (unless you have a lawyer).

17. Your name, typed or clearly printed (unless you have a lawyer).

18. Your address (unless you have a lawyer).

Set out in separate, numbered paragraphs the following:

1. The capacity of all persons who are parties to the proceeding.
2. The place of residence of the applicant.
3. A list of the affidavits or other documentary Evidence intended to be used on the hearing of the application.
4. Particulars of previous proceedings with respect to the application.
5. Particulars of any oral or written agreements with respect to the application.

Énoncer les éléments suivants dans des paragraphes numérotés et distincts:

1. La qualité de toutes les personnes qui sont parties à l'instance.
2. Le lieu de résidence du requérant.
3. Une liste des affidavits ou des autres preuves littérales pouvant être utilisés à l'audition de la requête.
4. Des précisions sur toute instance antérieure portant sur le même objet.
5. Des précisions sur toutes ententes verbales ou écrites conclues relativement à cette demande.

1. The Applicant, Mary Lynn Smith, is the spouse of John Smith of New Brunswick, having been married on June 21, 1999, in Smalltown, New Brunswick. There are two children from the marriage, Kimberly Ann Smith born March 15, 2002, and David Scott Smith, born January 23, 2003. The Applicant and Respondent separated on June 1, 2008. [9]
2. The Applicant and Respondent both reside in the town of Smalltown, County of York, Province of New Brunswick.[10]
3. The affidavits and other documentary evidence to be used on the hearing of this application are:
   a) The affidavit of Mary Smith, Applicant; [11]
   b) Financial Statement (72J) of Mary Smith, Applicant.
4. There have been no previous court proceedings about this claim.[12]
5. There have been no oral or written agreements that relate to this claim.[13]

DATED at _____,[14]
this ____ day of _____, 20___. [15]

FAIT à _____,
le _____, 20___.

_____ [16]

Lawyer for the applicant (or applicant where he or she is not represented by a lawyer).

Name of Applicant: Mary Smith[17]

Address for service in New Brunswick:
456 Main Street, Smalltown, N.B. E3A 1Z1[18]

_____

Avocat du requérant (ou le requérant, s'il n'est pas représenté par un avocat)

Nom du requérant:_____

Adresse aux fins de signification au Nouveau-Brunswick :

_____

Example of a Notice of Application (Form 73A)

[1] Court File Number 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between:

Mary Smith, [3] Applicant

- and-

John Smith, [4] Respondent

NOTICE OF APPLICATION
(FORM 73A)

TO: JOHN SMITH [5]

LEGAL PROCEEDINGS HAVE BEEN COMMENCED BY FILING THIS NOTICE OF APPLICATION

The applicant will apply to the court at _____ [6] (*specific location*) on the ___ day of _____, 20__ at ____a.m. (or p.m.) for an order as set out hereunder.

IF YOU DO NOT APPEAR AT THE HEARING

(a) An order which may affect you may be made in your absence, or

(b) if the court is satisfied that your attendance is necessary for a just determination of the application, a warrant may be issued directing a a peace officer to apprehend you and bring you before the court.

If you wish to oppose this application you must appear at the hearing of the application at the place, date and time stated either in person or by a New Brunswick lawyer acting on your behalf.

[1] N° du dossier: 1301-0000

Cour du Banc de la Reine du Nouveau-Brunswick
Division de la Famille
Circonscription Judiciaire de_____

ENTRE:

REQUERANT

-et-

INTIME,

AVIS DE REQUÊTE
(FORMULE 73A)

DESTINATAIRE :_____

PAR LE DÉPÔT DU PRÉSENT AVIS DE REQUÊTE,UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE CONTRE VOUS.

Le requérant présentera une requête à la cour à _____ (*lieu précis*) le _____, 20___à_____ h _____ en vue d'obtenir l'ordonnance décrite ci-dessous.

SI VOUS NE COMPARAISSEZ PAS À L'AUDIENCE

a) une ordonnance vous concernant pourra être rendue en votre absence ou

b) si la cour estime que votre comparution est nécessaire à la solution équitable de la requête, elle pourra émettre un mandat prescrivant à un agent de la paix de vous arrêter et de vous amener devant elle.

Si vous désirez contester cette requête, vous devrez comparaître à l'audition de la requête aux lieu, date et heure indiqués, soit en personne, soit par l'intermédiaire d'un avocat du Nouveau-Brunswick chargé de vous représenter.

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. The other parent's name.

6. Leave these spaces blank for the staff at the court office to write in the date of the court hearing.

If you wish to present affidavit or other documentary evidence to support your position, you must file a copy of such evidence in this court office not more than 20 days after being served with this Notice of Application.

IF THIS NOTICE OF APPLICATION CONTAINS A CLAIM FOR SUPPORT OR CUSTODY, YOU MUST, NOT MORE THAN 20 DAYS AFTER BEING SERVED WITH THIS NOTICE OF APPLICATION, SERVE ON THE APPLICANT YOUR FINANCIAL STATEMENT IN THE FORM PRESCRIBED BY THE RULES OF COURT AND ANY INCOME INFORMATION REQUIRED BY THE REGULATIONS RESPECTING ORDERS FOR CHILD SUPPORT UNDER THE *FAMILY SERVICES ACT*, WHETHER OR NOT YOU WISH TO OPPOSE THE APPLICATION.

You are advised that:

(a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

(b) the applicant intends to proceed in the English language;[7]

(c) if you intend to proceed in or present evidence in the other official language, an interpreter may be required and you must so advise the administrator at least 7 days before the hearing.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by, _____ Administrator of the Court, at _____ on the____ day of _____, 20___.

7. English or French. The language that you will use at the court hearing.

Si vous désirez présenter un affidavit ou quelque autre preuve littérale à l'appui de votre cause, vous devrez en déposer copie au secrétariat de cette cour dans les 20 jours qui suivent la signification de l'avis de requête.

SI LE PRÉSENT AVIS DE REQUÊTE CONTIENT UNE DEMANDE DE SOUTIEN OU DE GARDE D'ENFANTS,VOUS DEVREZ, DANS LES 20 JOURS QUI SUIVENT SA SIGNIFICATION, SIGNIFIER AU REQUÉRANT VOTRE ÉTAT FINANCIER EN LA FORME PRESCRITE PAR LES RÈGLES DE PROCÉDURE AINSI QUE TOUS RENSEIGNEMENTS SUR LE REVENU REQUIS EN VERTU DES RÈGLEMENTS CONCERNANT LES ORDONNANCES DE SOUTIEN POUR ENFANT ÉTABLIS EN VERTU DE *LA LOI SUR LES SERVICES À LA FAMILLE*, QUE VOUS AYEZ OU NON L'INTENTION DE CONTESTER LA REQUÊTE.

Sachez que:

a) dans la présente instance, vous avez le droit d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

b) le requérant a l'intention d'utiliser la langue_____;

c) si vous avez l'intention d'utiliser l'autre langue officielle ou de présenter votre preuve dans cette autre langue, les services d'un interprète pourront être requis et vous devrez en aviser l'administrateur au moins 7 jours avant l'audience.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par _____, administrateur de la cour à_____, le _____, 20___.

8. Leave these spaces blank for the staff at the court office to fill in.

_____[8]
(administrator)

_____
_____
_____
(address of court office)

_____
(administrateur)

_____
_____
_____
(adresse du secrétariat de la cour)

On the hearing of this application, the applicant intends to apply for an order that (*state precisely the relief being sought*).[9]

À l'audition de la requête, le requérant a l'intention de demander qu'une ordonnance soit rendue relativement à (*préciser les mesures de redressement sollicitées*).

9. Write down exactly what court order you are asking the court to make.

1. Custody of Kimberly Ann Smith, born March 15, 2001, and David Scott Smith, born January 23, 2003, be granted to Mary Smith, the Applicant, under section 129(2) of the *Family Services Act*; and

2. John Smith, the Respondent, pay support for the children of the marriage, Kimberly Smith and David Smith, under sections 115(1), 112(1) and 113 of the *Family Services Act*,

   AND all support payments be indexed to the Cost of Living index

   AND these payments be made payable retroactively from a date deemed appropriate by the Court under section 116(1)(i) of the above mentioned Act.

   AND all support payments be made payable to the Court of Queen's Bench, Family Division, Fredericton, New Brunswick, under section 116(1)(h) of the above mentioned Act; and

3. The Respondent be required to continue all insurance, health and dental plans to which he may be entitled through his employer for the benefit of his wife, Mary Smith, and for the benefit of the children, Kimberly Smith and David Smith.

4. Costs, and

5. Any other order that the Court considers just.

Set out in separate, numbered paragraphs the following:

1. The capacity of all persons who are parties to the proceeding.

2. The place of residence of the applicant.

3. A list of the affidavits or other documentary evidence intended to be used on the hearing of the application.

4. Particulars of previous proceedings with respect tothe claim.

5. Particulars of any oral or written agreements with respect to the claim.

Énoncer les éléments suivants dans des paragraphes numérotés et distincts:

1. La qualité de toutes les personnes qui sont parties à l'instance.

2. Le lieu de résidence du requérant.

3. Une liste des affidavits ou des autres preuves littérales pouvant être utilisés à l'audition de la requête.

4. Des précisions sur toute instance antérieure portant sur le même objet.

5. Des précisions sur toutes ententes verbales ou écrites conclues en rapport avec cette demande.

10. Write in the details of your situation.

11. The place and county where you live.

12. The documents that you will use for the court hearing.

13. Write down if there were any court proceedings before about the same subject, for example custody, access or support.

14. Write down if you and the other parent have any written or spoken agreements about the same subject, for example custody, access or support.

15. The place where you sign the notice of application.

16. The date (day, month and year) that you sign the notice of application.

17. Your signature (unless you have a lawyer).

18. Your name, typed or clearly printed (unless you have a lawyer).

19. Your address (unless you have a lawyer).

1. The Applicant, Mary Lynn Smith, is the spouse of John Smith of New Brunswick, having been married on June 21, 1999, in Smalltown, New Brunswick. There are two children from the marriage, Kimberly Ann Smith born March 15, 2001, and David Scott Smith, born January 23, 2003. The Applicant and Respondent separated on June 1, 2008. [10]
2. The Applicant and Respondent both reside in the town of Smalltown, County of York, Province of New Brunswick. [11]
3. The affidavits and other documentary evidence to be used on the hearing of this application are: [12]
   a) The affidavit of Mary Smith, Applicant;
   b) Financial Statement (72J) of Mary Smith, Applicant.
4. There have been no previous court proceedings about this claim. [13]
5. There have been no oral or written agreements that relate to this claim. [14]

DATED at Smalltown [15], this ____ day of _____, 20___. [16]

_____ [17]

Mary Smith [18], Applicant

Name of Applicant: Mary Smith

Address for service in New Brunswick:
456 Main Street, Smalltown N.B. E3A 1Z1 [19]

NOTE: This Application shall be accompanied by a Financial Statement, if required.

FAIT à _____, le _____, 20___.

_____

Avocat du requérant (ou le requérant, s'il n'est pas représenté par un avocat)

Nom du requérant: _____

Adresse aux fins de signification au Nouveau-Brunswick :

_____

_____

Rem. : Cette requête doit, dans certains cas, être accompagnée d'un état financier.

Example of a Responding Document

[1] Court File Number 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between: Mary Smith, [3] Applicant

- and-

John Smith, [4] Respondent

RESPONDING DOCUMENT

I, John Smith, of Smalltown, in the county of York and the Province of New Brunswick, make oath and say that: [5]

1. I am the Respondent in the Notice of Motion dated September 15, 2009 wherein Mary Smith is the Applicant.

2. I intend to proceed in the English language.

3. I oppose the Motion of the Applicant, Mary Smith.

4. I request an order for access to the children, Kimberly Smith and David Smith, be granted to the Respondent, John Smith, under section 129(3) of the *Family Services Act*.[6]

5. It is in the best interests of the children to spend time with me, their father.

Sworn before me at _____in the County of _____ in the Province of New Brunswick this ___ day of _____, 20_____.

_____ _____
Commissioner of Oaths John Smith

Address for service:
789 Queen Street, Smalltown N.B. E3A 1Z2

Where the Respondent seeks support, this form shall be accompanied by a Financial Statement in Form 72J and any income information required by the regulations respecting orders for child support under the *Family Services Act*.

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. Give the reasons why the court should refuse the motion.

6. If you are asking the court to do anything in addition to refusing the motion, write down what you would like the court to order.

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. The name of the other parent.

6. Leave these spaces blank for the staff at the court office to fill in.

7. Write down exactly what order you are asking the court to make.

Example of a Notice of Motion (Form 37A)

[1] Court File Number 1301-0000 [1] Nº du dossier: 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Cour du Banc de la Reine du Nouveau-Brunswick
Division de la Famille
Circonscription Judiciaire de_____

Between:

Mary Smith, [3] Plantiff

- and -

John Smith, [4] Respondent

ENTRE:

_____ **DEMANDEUR**

-et-

_____ INTIMÉ

NOTICE OF MOTION
(FORM 37A)

AVIS DE MOTION
(FORMULE 37A)

TO: JOHN SMITH [5]

A:_____

The plaintiff will apply to the court at _____,[6] on the ___ day of _____ 20__, at _____ for an order that: (*state the precise order sought and the grounds to be argued, including a reference to any statutory provision or rule to be relied on*); [7]

Le demandeur demandera à la cour à_____, le _____, 20__, à ____ h, d'ordonner (*indiquer l'ordonnance demandée, les motifs à discuter et les renvois aux dispositions législatives ou règles qui seront invoquées*);

1. Custody of Kimberly Ann Smith, born March 15, 2001, and David Scott Smith, born January 23, 2003, be granted to Mary Smith, the Applicant, under section 129(2) of the *Family Services Act*; and
2. John Smith, the Respondent, pay support for the children of the marriage, Kimberly Smith and David Smith, under sections 115(1), 112(1) and 113 of the *Family Services Act*,

   AND all support payments be indexed to the Cost of Living index

   AND these payments be made payable retroactively from a date deemed appropriate by the Court under section 116(1)(i) of the above mentioned Act.

   AND all support payments be made payable to the Court of Queen's Bench, Family Division, Fredericton, New Brunswick, under section 116(1)(h) of the above mentioned Act; and
3. The Respondent be required to continue all insurance, health and dental plans to which he may be entitled through his employer for the benefit of his wife, Mary Smith, and for the benefit of the children, Kimberly Smith and David Smith.
4. Costs, and
5. Any other order that the Court considers just.

Upon the hearing of the motion the following Affidavits or other documentary evidence will be presented: *(list the documentary evidence to be used at the hearing of the motion).*[8]

a) The affidavit of Mary Smith, Plaintiff;

b) Financial Statement (72J) of Mary Smith, Plaintiff.

You are advised that:

(a) you are entitled to issue documents and present evidence at the hearing in English or French or both;

(b) the plaintiff (or as may be) intends to proceed in the English language;[9] and

(c) if you intend to proceed in the other official language, an interpreter may be required and you must so advise the clerk at least 7 days before the hearing.

DATED AT _____, [10] this ___day _____of _____, 20_____.[11]

_____[12]

Mary Smith[13], Plaintiff [14]

A l'audition de la motion, les affidavits ou les autres preuves littérales suivantes seront présentées: *(énumérer les preuves littérales qui seront utilisées lors de l'auditio de la requête).*

Sachez que :

a) vous avez le droit d'émettre documents et de presenter votre preuve à l'audience en français, en anglais ou dans les deux langues;

(b) le demandeur (ou selon le cas) a a l'intention d'utiliser la langue _____; et

(c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous vous devrez en aviser le greffier au moins 7 jours avant l'audience.

FAIT à _____, this ___day _____of _____, 20_____.

_____

8. The documents that you will use for the court hearing.

9. English or French, the language you will use at the court hearing.

10. The place where you sign the notice of motion.

11. The date (day, month and year) that you sign the notice of motion.

12. Your signature.

13. Your name, typed or clearly printed.

14. If you are making the motion, write "plaintiff" after your name.

Example of a Notice of Motion (Form 72U)

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. The name of the other parent.

[1] Court File Number 1301-0000 [1] N° du dossier: 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Cour du Banc de la Reine du Nouveau-Brunswick
Division de la Famille
Circonscription Judiciaire de _____

Between:

Mary Smith, [3] Applicant

- and -

John Smith, [4] Respondent

ENTRE:

_____ REQUÉRANT

-et-

_____ INTIMÉ

NOTICE OF MOTION (FORM 72U)

AVIS DE MOTION (FORMULE 72U)

TO: JOHN SMITH [5]

À: _____

The applicant will apply to the court at _____, on the ___ day of _____ 20__, at _____ for the following order:

Le requérant demandera à la cour à _____, le _____, 20__, à _____ h, d'ordonner l'ordonnance qui suit:

(Please check the appropriate box or boxes.)

1. Child support for the following children:

☑ interim order or

☐ variation (or rescission or suspension) of attached order

(Veuillez cocher la ou les cases appropriées)

1. Ordonnance alimentaire au profit des enfants suivants:

☐ ordonnance provisoire ou

☐ modification (ou abrogation ou suspension) de l'ordonnance annexe

Name of child **Nom de l'enfant**	**Age** **Âge**	**Date of birth** **Date de naissance**
Kimberly Ann Smith	8	March 15, 2001
David Scott Smith	6	January 23, 2003

(If claiming special expense(s) please specify nature and amount, where possible, of the expense(s) claimed and name of child(ren) for which expense(s) are claimed.)

(Si vous demandez des dépenses spéciales veuillez en préciser, si possible, la nature et le montant et le nom d'enfant pour ce qui ces dépenses sont sollicitées.)

Nature of expense **Nature des dépenses**	**Amount claimed** **Montant sollicité**	**Name of child** **Nom de l'enfant**

(State the grounds to be argued including areference to any statutory provision or rule to be relied on. If claiming an amount that is from the table amount and is not an expense, please specify the amount. Please attach affidavit specifying the reasons which you are relying for departure from amount.) [6]

(Indiquer les motifs à discuter, y compris les renvois à toute disposition législative ou à toute règle invoquée. Si vous un different montant demandez qui diffère du special montant figurant à la table, et qui n'est pas une depense spéciale, veuillez en upon préciser le montant. Veuille joindre un table affidavit indiquant les raisons sur lesquelles vous vous appuyez pour demander un montant autre que ce-lui qui apparait à la table.)

6. Write down exactly what order you are asking the court to make.

1. Custody of Kimberly Ann Smith, born March 15, 2001, and David Scott Smith, born January 23, 2003, be granted to Mary Smith, the Applicant, under section 129(2) of the *Family Services Act;* and
2. John Smith, the Respondent, pay support for the children of the marriage, Kimberly Smith and David Smith, under sections 115(1), 112(1) and 113 of the *Family Services Act*,

   AND all support payments be indexed to the Cost of Living index

   AND these payments be made payable retroactively from a date deemed appropriate by the Court under section 116(1)(i) of the above mentioned Act.

   AND all support payments be made payable to the Court of Queen's Bench, Family Division, Fredericton, New Brunswick, under section 116(1)(h) of the above mentioned Act; and
3. The Respondent be required to continue all insurance, health and dental plans to which he may be entitled through his employer for the benefit of his wife, Mary Smith, and for the benefit of the children, Kimberly Smith and David Smith.
4. Costs, and
5. Any other order that the Court considers just.

Particulars of Previous Order [7]
Date of previous order_____
Amount paid under previous order_____

Precisions sur l'ordonnance antérieure :
Date de l'ordonnance antérieure_____
Montant payé en vertu de l'ordonnance antérieure_____

7. Fill in particulars of any previous order.

2. Custody of the following children:

☑ interim order or

☐ variation (or rescission or suspension) of attached order

2. Ordonnance de garde des enfants suivants:

☐ Ordonnance provisoire ou

☐ Modification (ou abrogation ou suspension) de l'ordonnance annexée

Name of child **Nom de l'enfant**	**Age** **Âge**	**Date of birth** **Date de naissance**
Kimberly Ann Smith	8	March 15, 2001
David Scott Smith	6	January 23, 2003

Previous custody arrangement: n/a

_____

Date of previous order:

_____ _____

Entente de garde antérieure:_____

Date de l'ordonnance antérieure:

_____

8. If you are making a claim under this section, you should get legal advice.

3. Other claim *(Please specify. State the relief sought and the grounds to be argued, including a reference to any statutory provision to be relied on.)* [8]

3. Autre demande *(Veuillez préciser Indiquez les mesures de redressement sollicitées et les motifs à discuter. Y compris les renvois à toute disposition législative invoquée).*

9. List documents you will use for the hearing.

Upon the hearing of the motion, the following affidavits or other documentary evidence will be presented: *(list the documentary evidence to be used at the hearing of the motion)* [9]

1. Affidavit of Mary Smith
2. Financial statement (form 72J) of Mary Smith

À l'audition de la motion, les affidavits ou les autres preuves littérales suivants seront présentés: *(énumérez les preuves littérales qui seront utilisées lors de l'audition de la motion)*

10. English or French, the language you will use at the hearing.

You are advised that:

a) you are entitled to issue documents and present evidence at the hearing in English or French or both;

b) the applicant intends to proceed in the English language;[10] and

c) if you intend to proceed in the other official language, an interpreter may be required and you must so advise the clerk at least 7 days before the hearing.

Sachez que:

a) vous avez le droit dans la présente audition, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

b) le demandeur a l'intention d'utiliser la langue _____; et

c) si vous vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez en aviser la greffier au moins 7 jours avant l'audition.

11. Fill in the place and date when you signed the Notice of Motion.

DATED at _____ this ___ day of _____20 .[11]

FAIT à _____ le _____, 20____.

12. Type or print your name under your signature.

_____

Mary Smith[12]

_____

Example of a Cover Page for a Record on Motion

[1] Court File Number 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between:	Mary Smith, [3]	Applicant
	- and-	
	John Smith, [4]	Respondent

August 1, 2009 [5]

Record on Motion

Mary Smith, Applicant
456 Main Street
Smalltown, NB, E3A 1Z1
Telephone: 555-0000 [6]

John Smith, Respondent
789 Queen Street
Smalltown, NB , E3A 1Z2
Telephone: 555-1111 [7]

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. The date (day, month and year)

6. Your name, address and telephone number.

7. The name, adress and telephone number of the other parent.

Example of an Index for a Record on Motion

[1] Court File Number 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between:	Mary Smith, [3]	Applicant
	- and-	
	John Smith, [4]	Respondent

Index

1. Notice of Motion of Mary Smith [5]
2. Affidavit of Service of the Notice of Motion on the Respondent John Smith [6]
3. Affidavit of Mary Smith [7]
4. Affidavit of John Smith [8]

1-4 Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. Your name

6. The name of the other parent

7. The documents that you are using for the motion.

8. The documents that the other parent is using for the motion and has sent you.

1-4. Always include the court file number, the judicial district, your name and the other parent's name at the beginning of the document.

5. Your name

6. The place where you live

7. The county where you live

8. The date (day, month and year) when you signed the Notice of Application.

9. See the guide for more information on what to include in an affidavit.

Example of an Affidavit

[1] Court File Number 1301-0000

In The Court of Queen's Bench of New Brunswick
Family Division
Judicial District of Fredericton [2]

Between:	Mary Smith, [3]	Applicant
	- and-	
	John Smith, [4]	Respondent

I, Mary Ann Smith[5], of Smalltown[6], in the County of York[7], Province of New Brunswick, make oath and say that:

1. I am the applicant named in the Notice of Application dated the ____ day of _____, 20___. [8]

2. The respondent John William Smith resides at 789 Queen Street in the town of Smalltown in the province of New Brunswick. [9] I know this address, as that is where I contacted the respondent to discuss matters relating to the children.

3. The respondent John Smith and I were married on June 21, 1995.

4. On that date, June 21, 1995 the respondent and I started living together at 456 Main Street in the town of Smalltown in the province of New Brunswick.

5. The respondent moved out on June 1, 2004 when we separated.

6. The respondent and I have two children, Kimberly Ann Smith and David Scott Smith.

7. Our daughter Kimberly Ann Smith was born on March 15, 2001 and she is now 8 years old.

8. Our son David Scott Smith was born on January 23, 2003 and he is now 6 years old.

9. The children have always lived and still live with me at 456 Main Street in the town of Smalltown in the province of New Brunswick.

10. When we lived together the respondent worked full-time as an accountant at the firm of Smarter & Faster. He worked days, Monday to Friday, from 8 a.m. to 5:30 p.m. As far as I know he still works there.

11. The respondent's yearly income when we separated was $40,000.

12. After we separated the respondent sent me $500 in child support in July 2008 and August 2008.

13. I have not received any child support payments since August 2008.

14. The respondent and I have been unable to reach agreement about the terms of our separation.

15. There have been no previous court proceedings with respect to the claim.

16. I work full-time at the FastStop. I work 8 a.m. to 4 p.m. from Monday to Friday every week. The children stay with my mother after school until I finish work.

17. I have always been the primary caregiver of the children. I clothe the children. I feed the children 3 times a day. During the school year, I take Kim to Brownies on Tuesday evenings and I take David to hockey practice twice a week. I take the children to Sunday school weekly.

18. Due to the above, I believe it is in the best interests of the children that they remain in my care and custody.

19. I request that the court make an order that custody of Kimberly Ann Smith, born March 15, 2001, and David Scott Smith, born January 23, 2003, be granted to me, the Applicant. I also request that the Respondent, John Smith pay maintenance for the support of the children of the marriage, Kimberly Ann Smith and David Scott Smith.

I read the Notice of Application when I signed it and I have just reread it. I confirm that all of the information in the Notice of Application is correct.

SWORN before me at _____, in the County of_____, [10]

in the Province of New Brunswick, this _____ day of _____, 20___.

_____ _____[11]

Commissioner of Oaths Mary Smith [12]

10. Leave these blanks for the commissioner of oaths to fill in when you sign the affidavit.

11. Leave a blank for your signature

12. Your name, typed or clearly printed.